

HEARING ON EPA APPROVAL OF NEW POWER  
PLANTS: FAILURE TO ADDRESS GLOBAL  
WARMING POLLUTANTS

Thursday, November 8, 2007

House of Representatives,  
Committee on Oversight  
and Government Reform,  
Washington, D.C.

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**Committee Hearings**

of the

**U.S. HOUSE OF REPRESENTATIVES**



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11 |       The committee met, pursuant to call, at 10:00 a.m., in  
12 | room 2154, Rayburn House Office Building, the Honorable Henry  
13 | A. Waxman [chairman of the subcommittee] presiding.

14 |       Present: Representatives Waxman, Towns, Kucinich,  
15 | Tierney, Watson, Yarmuth, McCollum, Hodes, Sarbanes, Davis of  
16 | Virginia, Shays, Platts, Issa, Sali

17 |       Staff Present: Karen Lightfoot, Communications Director  
18 | and Senior Policy Advisor; Greg Dotson, Chief Environmental  
19 | Counsel; Alexandra Teitz, Senior Environmental Counsel; Erik  
20 | Jones, Counsel; Earley Green, Chief Clerk; Teresa Coufal,

21 Deputy Clerk; Caren Auchman, Press Assistant; Zhongrui ``JR``  
22 Deng, Chief Information Officer; Leneal Scott, Information  
23 Systems Manager; Kerry Gutknecht, Staff Assistant; William  
24 Ragland, Staff Assistant; Larry Halloran, Minority Deputy  
25 Staff Director; Ellen Brown, Minority Legislative Director  
26 and Senior Policy Counsel; A. Brooke Bennett, Minority  
27 Counsel; Howie Denis, Minority Senior Professional Staff  
28 Member; Kristina Husar, Minority Counsel; John Cuaderes,  
29 Minority Senior Investigator and Policy Advisor; Larry Brady,  
30 Minority Senior Investigator and Policy Advisor; Patrick  
31 Lyden, Minority Parliamentarian and Member Services  
32 Coordinator; Brian McNicoll, Minority Communications  
33 Director; Benjamin Chance, Minority Clerk; Ali Ahmad,  
34 Minority Deputy Press Secretary; John Ohly, Minority Staff  
35 Assistant

36 Chairman WAXMAN. The Committee will please come to  
37 order.

38 Today's hearing will examine carbon dioxide emissions  
39 from new coal-fired power plants. Pending before the  
40 Environmental Protection Agency and State agencies are dozens  
41 of applications to build new coal-fired power plants. These  
42 power plants are huge and they are enormous sources of  
43 greenhouse gas emissions.

44 A single plant, the White Pine Plant proposed in Nevada,  
45 will emit over a billion tons of CO2 over its lifetime. If  
46 approved without carbon controls, this one plant will emit as  
47 much carbon dioxide as all of the vehicles, factories and  
48 power plants in South Dakota.

49 Scientists say that we need to reduce CO2 emissions by  
50 80 percent from today's level to avoid catastrophic global  
51 warming. This is a big challenge. It will require all  
52 sectors of our economy to become more efficient and cut their  
53 emissions. But these changes are absolutely to prevent  
54 irreversible climate change. The very last thing we should  
55 be doing is making the problem worse by approving massive new  
56 sources of uncontrolled CO2 emissions.

57 But that is exactly what the Bush Administration is  
58 doing. The Administration's policy is the climate equivalent  
59 of pouring gasoline on a fire. The approval of new power  
60 plants without carbon controls is irresponsible, it is

61 | indefensible, and it is illegal.

62 |       Our lead witness today is EPA Administrator Stephen  
63 | Johnson. For most of his tenure, he has been able to avoid  
64 | climate change issues by saying the EPA lacks the legal  
65 | authority to regulate CO2 emissions. This changed in April,  
66 | when the Supreme Court ruled that Administrator Johnson does  
67 | have the authority to regulate greenhouse gases under the  
68 | Clean Air Act. Two of the largest sources of greenhouse  
69 | gases are motor vehicles and power plants. To date, public  
70 | attention has been focused primarily on EPA's record on  
71 | vehicles. It is not an encouraging record. Administrator  
72 | Johnson has yet to take any action to control CO2 emissions  
73 | from cars and trucks, and he has been ignoring a request by  
74 | California to regulate these emissions for almost two years.

75 |       Today we are going to look at EPA's policy on power  
76 | plants. In August, EPA took its first regulatory action  
77 | since the Supreme Court ruled. EPA granted a permit to a new  
78 | coal-fired power plant, the Deseret Plant in Utah. EPA  
79 | didn't require any pollution controls for greenhouse gases,  
80 | and it didn't consider other alternatives, such as renewable  
81 | energy sources. It is as if the Supreme Court never ruled,  
82 | and EPA never heard of global warming.

83 |       We will learn today the potential consequences of this  
84 | business as usual policy are enormous. The Deseret Plant is  
85 | a relatively small one, but there are dozens of applications

86 for much larger power plants pending before EPA and State air  
87 pollution agencies. If these plants are approved without  
88 carbon controls, they will emit billions of tons of CO2  
89 emissions.

90 Let me put these emissions into context. Eight  
91 northeastern States have shown great leadership by adopting  
92 the first regional program in the United States to cap and  
93 reduce greenhouse gas emissions. But the approval of just  
94 one of the pending power plants would wipe out all of the  
95 gains these States are trying to achieve. These power plants  
96 can cost a billion dollars to build. They last for 50 to 60  
97 years, and we don't have the technology yet to retrofit them  
98 with carbon controls.

99 As a Nation, we will do irreversible damage to our  
100 climate change efforts if we follow this short-sighted  
101 policy. Addressing the threat of climate change poses many  
102 difficult and complex issues. But permitting the  
103 construction of massive new sources of uncontrolled CO2  
104 emissions should not be one of them.

105 While we struggle to develop the right policies for  
106 reducing our emissions, we should not be making our problems  
107 worse by approving a new generation of unregulated coal-fired  
108 power plants.

109 Before we move on, I want to recognize Mr. Davis for his  
110 opening statement.

111 | [Prepared statement of Mr. Waxman follows:]

112 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

113 Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman.

114 Climate change is a critical and complex issue that  
115 poses profound global challenges. Chairman Waxman and I  
116 share similar views regarding the importance of mitigating  
117 the effects of carbon dioxide build-up in the atmosphere and  
118 reducing production of greenhouse gases. When I sat in his  
119 chair, our Committee began the thoughtful, constructive  
120 inquiries into climate change issues that continue today.

121 But agreement on broad principles and goals doesn't mean  
122 we necessarily see eye to eye on every specific proposal to  
123 address climate change. Responsible policies will recognize  
124 that fragility and inter-dependence of environmental and  
125 economic ecosystems balance emission mitigation steps against  
126 the net effect on energy production and take account of  
127 downstream consequences and long-term implications.

128 The premise of this hearing, that the EPA should use a  
129 recent Supreme Court decision on regulation of mobile source  
130 carbon dioxide emissions as the basis for a broad new  
131 regulatory regime over stationary sources fails to meet those  
132 standards of responsible climate change strategy. And the  
133 focus on an ongoing energy facility permit decision  
134 inappropriately interjects Congress into judicial  
135 proceedings. Once again, the Committee has opted for advocacy  
136 rather than oversight, choosing to litigate by show trial,  
137 rather than examining the issue in depth.

138           The call to apply current Clean Air Act regulatory and  
139 permitting standards to stationary source CO2 emissions may  
140 be well-intentioned, but in my judgment, it is inapt. It  
141 would be a painfully uncomfortable fit to subject a huge  
142 swath of the American economy, including many small  
143 businesses, for the first time, to Clean Air rules and  
144 limitations designed to control well-understood pollutants,  
145 not a widely-diffused, naturally-occurring chemical compound.

146           Energy is the lifeblood of our economic vitality, and  
147 the onus of meeting climate change goals should not fall  
148 disproportionately or destructively on that group or any  
149 productive sector. Nor should current environmental  
150 protection tools be subverted or distorted to meet broader  
151 climate change objectives. If this hearing contributes  
152 anything constructive to the climate change debate, I hope it  
153 will begin to describe the sensible, workable and affordable  
154 restrictions on carbon dioxide emissions and other greenhouse  
155 gases not found in current law that Congress should move to  
156 enact.

157           Thank you.

158           [Prepared statement of Mr. Davis of Virginia follows:]

159           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

160 Chairman WAXMAN. Thank you very much, Mr. Davis.

161 For our first witness today, we have Stephen Johnson.

162 Mr. Johnson has served as Administrator of the Environmental  
163 Protection Agency since May of 2005. He has been working for  
164 the EPA in different capacities for the past 27 years.

165 Mr. Johnson, we want to welcome you to our hearing  
166 today. It is a practice of this Committee that all witnesses  
167 who testify do so under oath, so if you wouldn't mind  
168 standing and taking the oath.

169 [Witness sworn.]

170 Chairman WAXMAN. Let the record indicate you answered in  
171 the affirmative.

172 We are pleased to have you. Your full statement will be  
173 made part of the record. We would like to ask if you would  
174 limit your statement, if you could, to around five minutes.

175 We will have a clock there to remind you. It will turn  
176 yellow, that will indicate a minute, then when it is red, the  
177 five minutes have concluded.

178 STATEMENT OF THE HONORABLE STEPHEN L. JOHNSON, ADMINISTRATOR,  
179 ENVIRONMENTAL PROTECTION AGENCY

180 STATEMENT OF STEPHEN L. JOHNSON

181 Mr. JOHNSON. Good morning, Chairman Waxman and members  
182 of the Committee. I am pleased to be here today to update  
183 you on EPA's response to the Supreme Court decision on  
184 greenhouse gases and to discuss our recent decision to issue  
185 a permit to the Deseret Power Electric Cooperative in Utah.

186 On August 30th, EPA's regional office in Denver issued a  
187 final prevention of significant deterioration permit to allow  
188 Deseret Power to add a 110 megawatt waste coal-fired boiler  
189 to its existing Bonanza Power Plant in northeastern Utah.  
190 Deseret Power will use the increased generation capacity to  
191 supply electricity to several Utah municipalities. These  
192 include St. George, which the U.S. Census Bureau recently  
193 identified as the fastest-growing metropolitan area in the  
194 Country.

195 EPA issued the Deseret permit only after a comprehensive  
196 analysis and review which took more than three years to  
197 complete. This review included research to identify and  
198 evaluate available emissions control technology, discussions  
199 with Deseret Power about applying that technology and the

200 consideration of public comment. The permit enables Deseret  
201 Power to move forward in providing a reliable and secure  
202 supply of electricity, while at the same time making use of a  
203 previously untapped reserve of waste coal.

204 The final permit includes stringent emission limits for  
205 regulated pollutants, such as particulate matter, nitrogen  
206 oxides and sulfur dioxide. It does not, however, include  
207 emission limits for carbon dioxide, which we believe is the  
208 proper decision for this permit. While the Supreme Court's  
209 decision in Massachusetts v. EPA makes clear that carbon  
210 dioxide and other greenhouse gases are pollutants under the  
211 Clean Air Act, it also makes clear that the agency must take  
212 certain steps and make certain findings before a pollutant  
213 becomes subject to regulation under the law. Those steps  
214 include making a finding that a pollutant endangers public  
215 health or welfare, and developing the regulations themselves.  
216 The EPA plans to address the issue of endangerment when we  
217 propose regulations on greenhouse gas emissions for motor  
218 vehicles and fuels later this year.

219 EPA is firmly committed to addressing the long-term  
220 challenge of global climate change. While we are directing  
221 substantial resources toward meeting President Bush's  
222 aggressive goal of finalizing regulations on greenhouse gas  
223 emissions for motor vehicles and fuels by the end of next  
224 year, we are also evaluating the potential effects of the

225 Supreme Court decision on a variety of Clean Air Act  
226 programs, including stationary-source programs. We believe  
227 it is critical that we develop an approach to addressing  
228 greenhouse gases under the Clean Air Act as a whole, and not  
229 under individual clean air programs or through individual  
230 permitting decisions.

231 EPA is conducting this effort in an orderly and  
232 thoughtful fashion, so our policies will both achieve genuine  
233 environmental results and sustain the Country's economic  
234 health. Thank you, Mr. Chairman. I would be happy to take  
235 any questions you have.

236 [Prepared statement of Mr. Johnson follows:]

237 \*\*\*\*\* INSERT \*\*\*\*\*

238 Chairman WAXMAN. Thank you very much. You certainly  
239 came within the five minute period, so I guess you are really  
240 expecting to answer questions.

241 Mr. ISSA. Mr. Chairman?

242 Chairman WAXMAN. Yes.

243 Mr. ISSA. I would ask unanimous consent that our opening  
244 statements be admitted into the record, as we were not able  
245 to deliver them.

246 Chairman WAXMAN. That is certainly reasonable. Without  
247 objection, all members will have an opportunity to submit for  
248 the purposes of the record an opening statement. Without  
249 objection, that will be the order.

250 [Prepared statements of Committee members follow:]

251 \*\*\*\*\* INSERT \*\*\*\*\*

252 Chairman WAXMAN. Administrator Johnson, there are really  
253 two questions here. One is whether global warming impacts on  
254 these massive new power plants are a concern or not; and  
255 secondly, what authority do you have to address these  
256 impacts? I would like to put the authority question to the  
257 side and focus on what the real world impacts of these plants  
258 will be if they are built without any controls on greenhouse  
259 gas emissions. The Deseret Rock Plant pending in New Mexico  
260 will emit 12.7 million tons of CO2 per year. To put that in  
261 context, I earlier pointed out that eight States in the  
262 northeast have come together, created a regional cap and  
263 trade program for CO2 emissions. It is called the Regional  
264 Greenhouse Gas Initiative, RGGI. You are familiar with that  
265 program, aren't you?

266 Mr. JOHNSON. Yes.

267 Chairman WAXMAN. Okay. Now, a decision to permit the  
268 Deseret Rock Plant, without requiring CO2 controls, will  
269 negate the entire annual reductions that will be achieved by  
270 the northeastern States through this initiative. While these  
271 States are making sacrifices to address the threat of global  
272 warming, you are making permit decisions that undo all the  
273 good they are accomplishing. The proposed White Pine Plant  
274 pending in Nevada would have even greater emission: 20  
275 million tons each year. And these types of plants are  
276 massive capital investments that can cost a billion dollars

277 and they will last 50 to 60 years. Over its lifetime, the  
278 White Pine Plant would emit over a billion tons of CO2. That  
279 is a stunning amount.

280 Are you aware of this, Administrator Johnson?

281 Mr. JOHNSON. Mr. Chairman, I am aware the White Pine  
282 permit is currently pending in the State of Nevada. I am  
283 also--

284 Chairman WAXMAN. Are you aware of the emissions that are  
285 going to come from these power plants?

286 Mr. JOHNSON. I am aware that the permit is pending and  
287 that there are a number of issues that the State will work  
288 its way through with regard to that permit.

289 Chairman WAXMAN. Okay. Let's compare this impact to the  
290 effect of the voluntary programs that you and President Bush  
291 repeatedly promote. You have strongly advocated using  
292 voluntary programs, such as EnergyStar, to reduce energy use  
293 and achieve greenhouse gas reductions. You have said these  
294 programs are one of the highlights of the Administration's  
295 climate policy.

296 EPA's major voluntary initiatives are EnergyStar, the  
297 methane program, the green power partnerships, the combined  
298 heat and power partnership in the high GWP gas programs.  
299 Together, all of these programs have avoided 1.3 billion tons  
300 of greenhouse gas emissions since President Bush took office.  
301 Yet the lifetime emissions of just two new power plants,

302 Deseret Rock and White Pine, would more than wipe out the  
303 past decade of benefits from all of these voluntary programs.

304 Can you understand why members of this Committee would be so  
305 concerned about the impacts of your failure to require CO2  
306 reductions from these two new coal-fired power plants?

307 Mr. JOHNSON. Mr. Chairman, we share your concern. In  
308 fact, when we go back to April, as you mentioned in your  
309 opening remarks, indeed, the Supreme Court decision is  
310 historic, it is complex. We are working our way through and  
311 thoughtfully considering the impacts, first on mobile sources  
312 and then impact on stationary sources. I am very proud of  
313 the fact of our voluntary or partnership programs that are  
314 achieving real environmental results.

315 Chairman WAXMAN. But they will be wiped out. Those  
316 results will be lost if these power plants are permitted  
317 without any requirements to reduce CO2 emissions. I think  
318 the problem is that the Administration has no reservoir of  
319 credibility left on this issue. Global warming is an  
320 enormous threat to public health and the environment, yet  
321 virtually every action the Administration has taken has been  
322 designed, first of all, to sow seeds of doubt about the  
323 science, oppose mandatory controls and undermine the  
324 activities of States that are trying to deal with these  
325 issues. The President withdrew from the Kyoto Protocol. He  
326 declared that carbon dioxide is not a pollutant. His

327 | political advisors edited Government scientific reports to  
328 | instill uncertainty about scientific conclusions and you  
329 | still have not regulated CO2 emissions.

330 |         If you were serious about addressing climate change, you  
331 | wouldn't allow these new power plants to be built with no CO2  
332 | controls. You would understand what an enormous threat these  
333 | plants are and require them to use state of the art pollution  
334 | controls like coal gasification and carbon capture. What do  
335 | you say to that?

336 |         Mr. JOHNSON. Mr. Chairman, as a Nation we have devoted  
337 | \$37 billion to investment in science, technology and even tax  
338 | incentives. That is more than any other country in the  
339 | world. With regard to EPA, in addition to our partnership  
340 | programs, just a few weeks ago I announced that we are  
341 | drafting regulations to regulate, to set up a regulatory  
342 | framework for carbon sequestration storage, particularly the  
343 | storage, as part of our underground control program, which is  
344 | a necessary step as we move forward with capture and storage  
345 | of carbon dioxide.

346 |         In addition, since the Supreme Court decision, we have  
347 | announced that we are developing a proposed regulation to  
348 | regulate greenhouse gas emissions from mobile sources. That  
349 | is the first time in our Nation's history, and I have  
350 | committed to members of Congress and to the President that we  
351 | will have that proposed regulation out for public notice and

352 comment beginning by the end of this year and to work toward  
353 a final rule by the end of next year.

354 Chairman WAXMAN. Well, I appreciate all of that.

355 Mr. JOHNSON. Which is a very aggressive pace, as you are  
356 well aware.

357 Chairman WAXMAN. Well, but you don't dispute my  
358 statistics of what will happen if these two power plants have  
359 no CO2 emissions restrictions.

360 Mr. JOHNSON. Mr. Chairman, I have not personally looked  
361 at the statistics on those two power plants. But I am  
362 certainly well aware, and as I mentioned, that we are working  
363 very diligently to develop an overall approach, overall  
364 strategy, for addressing greenhouse gas emissions, given the  
365 Supreme Court decision under Massachusetts v. EPA, under the  
366 Clean Air Act. And that includes stationary sources.

367 Chairman WAXMAN. My time has expired, but I would hope  
368 that you, as the head of the EPA, would take a look at the  
369 amount of emissions that would come from those power plants  
370 if you approve them over a 50 or 60 year period. And if we  
371 can get these reductions, we ought to get them before we  
372 agree to have new sources of such magnitude.

373 Mr. Davis?

374 Mr. DAVIS OF VIRGINIA. I will yield to Mr. Issa.

375 Mr. ISSA. Thank you, Mr. Chairman, thank you, Ranking  
376 Member Davis.

377 Administrator, I want to make sure we get one thing  
378 understood in the record. If I read correctly the  
379 Massachusetts decision, not only did it only apply to mobile,  
380 but really all it says is that you have this authority to  
381 deal with a huge, naturally-occurring, clearly essential part  
382 of our air. Without carbon dioxide life on Earth stops. So  
383 it is not an element that you can eliminate. It is an  
384 element that, if you have too much of it, might cause a very  
385 bad side effect. If you have none of it, life ends. Is that  
386 correct?

387 Mr. JOHNSON. That is correct.

388 Mr. ISSA. Okay. So what they have said is simply that  
389 you have the authority, but of course you have the authority  
390 subject to sane, properly worked out science, is that  
391 correct?

392 Mr. JOHNSON. When the Supreme Court made the decision,  
393 they made the decision that said CO2 and other greenhouse  
394 gases are pollutants as defined under the Clean Air Act.  
395 They did not make the determination whether or not it was  
396 necessary to regulate them. They merely called them, or I  
397 should say not merely, but they defined them as pollutants,  
398 and then left the decision to me as Administrator as to  
399 whether they should or should not be regulated under the  
400 Clean Air Act.

401 Mr. ISSA. So essentially, if we would ask the question

402 about nitrogen, oxygen, any of the other elements on the  
403 entire table and combinations of molecules, the answer would  
404 have been the same, which is if it possibly could adversely  
405 affect air quality for life on Earth, then you have authority  
406 to regulate it. That is really what it said, very broad. It  
407 could be a pollutant, therefore you can regulate it.

408 Mr. JOHNSON. That is precisely my response to the  
409 Chairman, why the Supreme Court's decision was not only  
410 historic, but complex. Not only in terms of mobile sources  
411 and what it means for mobile sources, but also what it may  
412 mean for other parts of the Clean Air Act.

413 Mr. ISSA. When Chairman Waxman sent you a letter on  
414 September 17th, quoting, and I won't go into every one of  
415 these, but "Yet despite the urgent need to act, your agency  
416 is ignoring the threat of climate change in approving new  
417 coal-fired plants. This is both illegal under the Clean Air  
418 Act and an enormous missed opportunity." Is that accurate,  
419 his assertion that it is illegal?

420 Mr. JOHNSON. No, sir. I would beg to differ with the  
421 Chairman's characterization. In fact, our decision on  
422 Deseret Bonanza PSD permit certainly follows what the law is  
423 of today. And certainly that is my responsibility under the  
424 Clean Air Act. Certainly as a matter of record, it goes  
425 through and discusses issues such as advanced technology,  
426 such as IGCC, and other technologies. So I think that that

427 is, I would not agree with that characterization.

428 Mr. ISSA. Administrator, have you had the opportunity to  
429 look at the NRDC's testimony for today?

430 Mr. JOHNSON. I have not.

431 Mr. ISSA. Well, then, would it surprise you that NRDC's  
432 testimony states, for example, the Kansas decision to deny a  
433 permit because of carbon dioxide emissions highlights the  
434 lack of EPA leadership on this issue? Would that surprise  
435 you that they would make an assertion that there was somehow  
436 a lack of leadership by your administration?

437 Mr. JOHNSON. It would not surprise me, but I think it is  
438 important to look at the factual record on the Kansas  
439 Sunflower permit. In fact, the decision to deny the Kansas  
440 Sunflower, or to approve or deny was in fact, a decision to  
441 deny was made at the Kansas State authority level. In fact,  
442 when you read the staff recommendations of the, and I do have  
443 a copy if you would like for the record--

444 Mr. ISSA. Yes, we will have it for the record.

445 [Information to be supplied follows:]

446 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

447 Mr. JOHNSON. The Kansas Department of Health and  
448 Environment Bureau of Air and Radiation and Air Permitting  
449 Section, ``The Kansas Department of Health and Environment  
450 Bureau of Air and Radiation recommends the issuance of an air  
451 quality construction permit to Sunflower Electric Power  
452 Corporation for construction of two new 700 megawatt  
453 coal-fired steam generating units.``

454 Mr. ISSA. Administrator, does it surprise you that the  
455 NRDC, which sues you practically every day, I mean, that is a  
456 regular relationship you have with them, is that they sue  
457 you, is being featured here in testimony in spite of the  
458 Fifth Circuit when it said, ``When a Congressional  
459 investigation focuses directly and substantially on the  
460 mental decision process of a commission,`` like yourself,  
461 ``in which a case is pending before it, Congress is no longer  
462 intervening in the agency's legislative function, but rather  
463 in its judicial function.`` Would it surprise you that in  
464 fact the combination of litigants who sue you regularly and  
465 their testimony and your testimony on this process and the  
466 Fifth Circuit's fairly unusual statement pushing back on what  
467 we are doing here today, does that surprise you that that is  
468 all coming together here today to interfere with your  
469 legitimate execution during a time of pending decision?

470 Chairman WAXMAN. The gentleman's time has expired, but  
471 please answer the question.

472 Mr. JOHNSON. Thank you, Mr. Chairman.

473 My concern is that as Administrator of the EPA, I depend  
474 and in fact enjoy a highly qualified, in fact, I think the  
475 world's best, environmental protection staff. I depend upon  
476 them providing me candid comments without the fear of having  
477 a chilling effect on their ability to provide me candid  
478 advice, particularly when we are in a pre-decisional time of  
479 trying to sort through what is the best decision that I  
480 should make with regard to issues such as, what is the impact  
481 of the Supreme Court decision, Massachusetts v. EPA, what  
482 that may or may not be on stationary sources.

483 So I am concerned, very concerned about the potential  
484 chilling effect of this proceeding as we are talking, and as  
485 I am trying to sort through a very complex but a very  
486 significant issue.

487 Chairman WAXMAN. Thank you, Mr. Issa.

488 Mr. ISSA. Hopefully we will stand up and do the right  
489 thing.

490 Chairman WAXMAN. Mr. Johnson, you were asked to respond  
491 to my quote that said it was illegal and a lost opportunity.  
492 You said you didn't think it was illegal. Do you see it as a  
493 lost opportunity?

494 Mr. JOHNSON. Mr. Chairman, what I tried to say is,  
495 certainly, under the Clean Air Act, right as it stands now,  
496 it is not a regulated pollutant under the Act. That is

497 | certainly the case. So as we sort through what the impact of  
498 | the Supreme Court decision with mobile sources--

499 | Chairman WAXMAN. That is a question of whether you have  
500 | the legal authority. But don't you think it is a lost  
501 | opportunity?

502 | Mr. JOHNSON. Mr. Chairman, I have to obey--

503 | Chairman WAXMAN. Just give me a yes or no.

504 | Mr. JOHNSON. I have to obey what the law directs me to  
505 | do at this point and work through expeditiously, which we  
506 | are, but also responsibly to make sure that we are doing the  
507 | right thing.

508 | Chairman WAXMAN. Okay, thank you.

509 | Mr. Yarmuth?

510 | Mr. YARMUTH. Thank you, Mr. Chairman.

511 | Good morning, Mr. Johnson. Thank you for being here.

512 | I am going to ask a couple of questions at the outset  
513 | that may sound a little picky, but I am an editor by  
514 | background and I worry about what words mean, particularly  
515 | when, as I do, I have suspicions about the Administration's  
516 | commitment to environmental progress. On the second page of  
517 | your statement, about midway through the paragraph, you say,  
518 | these strategies, referring to strategies of reducing  
519 | greenhouse gas emissions, ``must be environmentally  
520 | effective.''

521 | What does environmentally effective mean? I understand

522 environmentally beneficial and environmentally sensitive. I  
523 don't understand effective.

524 Mr. JOHNSON. I would say that what we are trying to say  
525 is that there is an affect in a positive way on the  
526 environment. Of course, in many parts of our statutes,  
527 including the Clean Air Act, we are directed to balance the  
528 costs and benefits. Of course, that becomes part of the  
529 decision process. We are also required to, in parts of the  
530 Clean Air Act, to consider available technology, in some  
531 cases, the best available technology. So that becomes part  
532 of the equation for determining whether we have an effective  
533 environmental outcome.

534 Mr. YARMUTH. An effective outcome. Then on page six, in  
535 the second paragraph, the first full paragraph on that page  
536 you talk about resulting policies would achieve genuine  
537 environmental results. I hope you mean positive results.

538 Mr. JOHNSON. I certainly mean positive results.

539 Mr. YARMUTH. In Kentucky, we have a lot of not so  
540 positive environmental results from energy extraction. That  
541 is a very significant concern of ours.

542 I want to move to a discussion of the Deseret case and  
543 also the Supreme Court decision. As we have talked about,  
544 the court decision found that you do have the authority to  
545 regulate greenhouse gases. You recently granted a permit to  
546 Deseret, as we know, to build the plant. You took the

547 | position that the law did not require you to regulate CO2  
548 | emissions from these plants. I don't agree with that  
549 | analysis, but for the purpose of my question, I want to focus  
550 | on something else, and that is whether you had the authority  
551 | to consider alternatives to the Deseret Plant.

552 | I want to read to you from Section 165(a)(2) of the  
553 | Clean Air Act. It says that you have to hold hearings to  
554 | consider "the air quality impact of such source,  
555 | alternatives thereto, control technology requirements and  
556 | other appropriate considerations." Now, the Deseret Plan is  
557 | not a very large facility. It would seem to me there is a  
558 | fairly obvious alternative to that, of using maybe wind power  
559 | or solar power. But there is no evidence in the record that  
560 | you ever considered, the agency ever considered those  
561 | alternatives.

562 | Why did the EPA refuse to consider the possibility of  
563 | rejecting this plant, the coal-fired plant, in favor of a  
564 | wind or solar plant?

565 | Mr. JOHNSON. There are several key points I would like  
566 | to make to respond to your question. The first one is that  
567 | alternative analysis, which is what you are referring to, the  
568 | Clean Air Act does not require permitting authorities to  
569 | independently study all potential alternatives that are not  
570 | raised during the public comment process.

571 | In addition, as part of the BACT analysis, the best

572 available control technology analysis, commenters did not  
573 provide any evidence showing that the outcome of our BACT  
574 analysis would have resulted in a different choice of control  
575 technologies. Also, it is a longstanding policy that we  
576 would not use the BACT requirement as a means to re-define  
577 the basic design or scope of a proposed project.

578 Then third, the technology that was raised, IGCC, which  
579 is the Integrated Gasification Combined Cycle new technology,  
580 this alternative process not only represents a redefinition  
581 of the scope, but beyond that, it wouldn't work. It was  
582 technically infeasible because of the fuel and the plant  
583 size.

584 Mr. YARMUTH. According to the section that I read to  
585 you, it says that your agency is mandated to do, is required  
586 to consider the alternatives in the hearing, in the process.  
587 Did you not, do you disagree with that?

588 Mr. JOHNSON. There were public notice, several public  
589 notice and comments, which are all part of the record. As I  
590 said, the Clean Air Act does not require us to consider  
591 alternative analyses unless it was raised during the public  
592 comment. IGCC was one of the key areas that was raised  
593 during the public comment, and I have commented on the  
594 feasibility of that.

595 Mr. YARMUTH. My time is up, Mr. Chairman, but it seems  
596 to me that they certainly had the opportunity to pursue

597 alternatives to permitting this polluting plant. Because I  
598 think it shows an unwillingness to do what might be in the  
599 best interest of the environment. I yield back.

600 Chairman WAXMAN. Thank you, Mr. Yarmuth.

601 Mr. Davis?

602 Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman.

603 Mr. Johnson, do you think that the CAA is well-designed  
604 to regulate carbon dioxide emissions?

605 Mr. JOHNSON. Sir, I am faced with the reality that it is  
606 the Act that I am to focus my attention on. Having said  
607 that, I think it is very important in responding to your  
608 question, as we considered as an Administration the impact of  
609 the Supreme Court decision on mobile sources, it became very  
610 clear that a better approach than going through regulation,  
611 which I have already commented that we are going to be  
612 proposing a regulation, was a legislative fix. Certainly  
613 that is why the President proposed and certainly is  
614 encouraging members of Congress to take up his Twenty in Ten  
615 plan, which would not only help for energy security, but  
616 would also help our environment in particular, addressing  
617 greenhouse gas emissions.

618 Mr. DAVIS OF VIRGINIA. Or we could just take up part of  
619 the plan, or we could just fix this legislatively, and it  
620 would be pretty easy, wouldn't it?

621 Mr. JOHNSON. Yes.

622 Mr. DAVIS OF VIRGINIA. How is CO2 unlike other air  
623 pollutants that the EPA has effectively regulated under the  
624 Clean Air Act?

625 Mr. JOHNSON. It is, as we all keep using words, it is a  
626 global greenhouse gas. That presents a challenge, and part  
627 of the complexity. Having said that, being part of, in many  
628 things of uniqueness, the other part, which really shares,  
629 all sources share in common, and that is, how do you address  
630 it. The common element in addressing, whether it is mobile  
631 source or stationary source or whatever the source might be,  
632 is what is the technology that is available.

633 Of course, one of the things I am very proud as a Nation  
634 and under the President's leadership, we have been investing  
635 in technologies. Technologies like on the fuel side,  
636 cellulosic ethanol, which helps us in energy security and has  
637 a much better environmental profile, particularly with regard  
638 to greenhouse gases. And of course on stationary sources,  
639 carbon sequestration and storage is going to be key to  
640 addressing greenhouse gas emissions, particularly for a  
641 number of stationary sources. We have been investing a lot  
642 in trying to sort that out, and as I mentioned earlier--

643 Mr. DAVIS OF VIRGINIA. Higher miles per gallon, so  
644 higher CAFE standards help, too, don't they?

645 Mr. JOHNSON. And as part of the regulatory approach that  
646 we are going to be proposing by the end of the year is a

647 | higher fuel economy standard as well.

648 |         Mr. DAVIS OF VIRGINIA. Did you know that the Energy Bill  
649 | passed by the House did not have higher CAFE standards?

650 |         Mr. JOHNSON. Sir, we think, certainly to address  
651 | greenhouse gas emissions--

652 |         Mr. DAVIS OF VIRGINIA. That is one of the reasons I  
653 | opposed it. I don't think you can be serious about this  
654 | without raising that.

655 |         Mr. JOHNSON. That is correct.

656 |         Mr. DAVIS OF VIRGINIA. Let me just ask this. Are there  
657 | different challenges associated with regulating mobile  
658 | sources of CO2 and stationary sources of CO2?

659 |         Mr. JOHNSON. Again, I think that the challenges are very  
660 | complex. Mobile sources, there is certainly a defined  
661 | smaller universe of mobile sources. There is a very wide  
662 | range of potential stationary sources that we have to  
663 | consider. As I mentioned, I think one of the key, both  
664 | differences, as well as similarities, is how do you address  
665 | it. It is going to be technology driven.

666 |         Mr. DAVIS OF VIRGINIA. In your testimony you highlight  
667 | the need to apply the law and the regulations that currently  
668 | exist when evaluating a permit application. I think part of  
669 | the thrust of the hearing is to give you the assumption you  
670 | have more authority than maybe you feel you do under the law,  
671 | which is why you want a statutory change as opposed to a

672 broader interpretation of a judicial ruling.

673 Is part of your motivation behind that policy the desire  
674 not to be sued for arbitrary and capricious actions?

675 Mr. JOHNSON. Sir, the first is, I have to abide by the  
676 law as it is written today. That is certainly my first  
677 charge and responsibility. The second is recognizing that we  
678 are working diligently to understand what the impact of the  
679 Supreme Court decision and the steps we are taking on mobile  
680 sources, what effect that may or may not have on stationary  
681 sources.

682 Mr. DAVIS OF VIRGINIA. So if the law relates to, if the  
683 interpretation relates to one, but mobile and stationary may  
684 not be the same, there is a different interpretation on that?

685 Mr. JOHNSON. That is a very important question. That is  
686 the question we are asking ourselves.

687 Mr. DAVIS OF VIRGINIA. Also, aside from if you act  
688 arbitrarily and capriciously, you can get sued for that. I  
689 understand the argument here is let's be bold and let's move  
690 ahead, and you are saying, make a statutory change that makes  
691 it easy for you. But secondly, you want to create a sense of  
692 predictability and regulatory certainty, don't you, so that  
693 the business community can make rational investment  
694 decisions. If you are constantly changing policies without  
695 statutory authority, that is a hindrance. Is that a fair  
696 assumption?

697 Mr. JOHNSON. That is one of the key elements of the  
698 President's Twenty in Ten proposal, is that it provided  
699 certainty and also tends to eliminate the lengthy, lengthy  
700 litigation that goes on. So of course, when litigation  
701 happens, there is no environmental protection. That is why  
702 we would prefer to see, for mobile sources, the President's  
703 Twenty in Ten plan passed.

704 But in the meantime, we are developing regulations to  
705 pursue it from a regulatory, administrative standpoint.

706 Mr. DAVIS OF VIRGINIA. Thank you.

707 Chairman WAXMAN. Thank you, Mr. Davis.

708 Mr. Hodes?

709 Mr. HODES. Thank you, Mr. Chairman.

710 Good morning, Mr. Johnson, how are you?

711 Mr. JOHNSON. Good morning. Good, thank you.

712 Mr. HODES. I live in New Hampshire, where the natural  
713 air flow patterns that exist show that New Hampshire and much  
714 of the northeast is really the tailpipe of the Country. We  
715 are subject to the air pollution of other industrialized  
716 portions of the Country. So New Hampshire has joined other  
717 New England States in taking aggressive action on climate  
718 change and CO2 emissions, far more aggressive action than the  
719 EPA seems to have been willing to do.

720 And we are feeling the effects in New Hampshire of  
721 climate change. They are evident in the patterns of snowfall

722 and our maple syrup production. Our tourist industry depends  
723 on skiing. The effects in New Hampshire of global climate  
724 change are manifest. And 164 New Hampshire towns signed  
725 petitions, urging Congress, the President to take immediate  
726 action on climate change.

727         The United Nations Intergovernmental Panel on Climate  
728 Change, the IPCC, won the Nobel Prize this year for its role  
729 in helping humanity understand the causes and effects of  
730 global climate change. One of their conclusions is that  
731 climate change is likely to adversely affect the health of  
732 millions of people. It will result in increased deaths,  
733 disease and injury due to heat waves, floods, storms, fires  
734 and droughts. Climate change will result in increased  
735 malnutrition, increased diarrheal disease and increased  
736 cardio-respiratory disease, due to higher levels of smog.

737         And the IPCC is not alone in sounding the alarm about  
738 climate change. The World Health Organization has also  
739 stated that climate changes poses serious health risks. They  
740 project that it now causes over 150,000 deaths annually.  
741 Earlier this week, the American Public Health Association  
742 announced a new policy on climate change. Their executive  
743 director stated, ``Global climate change will undoubtedly  
744 have a detrimental effect on human health and the  
745 environment.''

746         The White House, however, has tried to suppress

747 discussions of the public health effects of climate change.  
748 When the CDC director testified before the Senate, her  
749 testimony was edited by the White House to delete the  
750 statement that CDC ``considers climate change a serious  
751 public health concern.'' And a White House spokesman  
752 emphasized in the press that there could be health benefits  
753 from climate change.

754 Now, we have heard in this Committee plenty about the  
755 politicization of science by this Administration. You are  
756 now here as the Administrator of the Environmental Protection  
757 Agency. And I have a very simple question for you, to which  
758 I would like a yes or no answer. Do you agree that climate  
759 change is a serious public health concern?

760 Mr. JOHNSON. Sir, I believe that climate change is a  
761 serious concern. In the context of the Clean Air Act, the  
762 Clean Air Act defines whether it causes or contributes to  
763 public welfare or public health. So in the context of the  
764 Clean Air Act, we are currently evaluating all of the  
765 science, and by the way, I am very proud of the EPA  
766 scientists who are part of and participated in the  
767 Intergovernmental Panel on Climate Change. They are very  
768 capable and competent scientists.

769 So we are, as I mentioned to the Chairman, we are going  
770 to be addressing the issue of endangerment, which then  
771 focuses on public welfare or public health as part of our

772 | proposal to regulate carbon dioxide for the first time in our  
773 | Nation's history from mobile sources later this year.

774 |       Mr. HODES. That is a long way of not answering my  
775 | question. I am asking you, Mr. Johnson, to tell us today,  
776 | here, right now, do you consider climate change a serious  
777 | public health concern? I want to know what you think.

778 |       Mr. JOHNSON. I have said what I think, and I will be  
779 | happy to repeat it.

780 |       Mr. HODES. I don't want you to repeat that answer.

781 |       Mr. JOHNSON. All right. That is what I think, sir.

782 |       Mr. HODES. So the answer is, you don't know whether or  
783 | not climate change is a serious public health concern?

784 |       Mr. JOHNSON. No, the answer is, in the context of the  
785 | Clean Air Act, I do not want to prejudge an issue that is  
786 | before me called endangerment, which I will be proposing to  
787 | address later this year, by the end of the year, so that  
788 | there will be an opportunity for everyone to comment on  
789 | whether it is or isn't. We are working to address that  
790 | issue, and it will be part of our notice and comment process  
791 | later this year.

792 |       Mr. HODES. I will just finish up, Mr. Chairman, by  
793 | saying this. Your refusal to answer the question which I  
794 | have posed to you, even understanding the context of what you  
795 | say is coming in terms of various evaluations you are  
796 | performing, is stunning in the light of the scientific

797 | consensus that climate change is a major public health  
798 | threat. And it is stunning that you, as the Administrator of  
799 | the Environmental Protection Agency, refuse to tell Congress  
800 | whether or not you consider this a serious public health  
801 | concern. Frankly, it is why many people who talk to me  
802 | rename your agency the Environmental Pollution Agency.

803 | I have nothing further of this witness at this time.

804 | Chairman WAXMAN. The gentleman's time has expired.

805 | Did you want to say something? Yes.

806 | Mr. JOHNSON. Thank you. I think that is a very unfair  
807 | characterization, sir. We as an agency and certain as an EPA  
808 | employee, this year 27 years, we have consistently considered  
809 | and achieved environmental protection. Our Nation's water is  
810 | cleaner than it was a decade ago, certainly 36 years ago,  
811 | even a few years ago. The same for our air and the same for  
812 | our land. And I respectfully disagree with your  
813 | characterization. I think that is very unfair and unkind to  
814 | the hard-working employees of EPA.

815 | Mr. HODES. Sir, it is not my characterization. As I  
816 | said to you, it is what I hear from constituents and what I  
817 | hear about the characterization. It is not mine, sir, at  
818 | all. I know EPA people and I have no truck with the work that  
819 | many fine employees of the EPA do. What I find stunning is  
820 | your refusal to admit, concede or acknowledge that global  
821 | climate change is a serious public health concern.

822 Mr. JOHNSON. And I said I think it is very inappropriate  
823 of me to prejudge and to make a comment on a regulation that  
824 I am going to proposing.

825 Chairman WAXMAN. He didn't ask you about the regulation.  
826 He asked you whether you thought that climate change was a  
827 public health issue. Now, you are committed to reducing  
828 pollution in the water. You are mandated by law to do it,  
829 but I assume you are committed to it. You are committed to  
830 reducing pollution in the air. That is what the Clean Air  
831 Act requires, and I assume you are committed personally to  
832 trying to achieve those objectives.

833 You may or may not have legal authority to deal with  
834 climate change, but do you think it is a problem? That is  
835 what he asked you? It is not an insult to your employees.

836 Mr. JOHNSON. And I said to your comment, Mr. Chairman,  
837 and as I said, I speak for the agency. I, Steve Johnson, am  
838 the Administrator of the agency. And when I speak, I speak  
839 on behalf of the agency and as Administrator. I have said I  
840 cannot and will not prejudge what we are going to propose to  
841 address--

842 Chairman WAXMAN. He asked you, do you think it is a  
843 public health problem?

844 Mr. JOHNSON. As I said, the consequences of his question  
845 are directly related to the issue of endangerment under the  
846 Clean Air Act. That is why I said I am not going to prejudge

847 | until we have an opportunity to propose.

848 | Chairman WAXMAN. Then I think the question has been  
849 | asked and answered.

850 | Ms. McCollum?

851 | Ms. MCCOLLUM. Thank you, Mr. Chair.

852 | Mr. Johnson, you said you were very proud of the work of  
853 | your scientists in the EPA. Did you strongly object and let  
854 | people know forcefully that you did not appreciate the fact  
855 | that some of the writings that the scientists had presented  
856 | on global climate change had been altered by the White House?

857 | Mr. JOHNSON. Again, my experience as a 27 year veteran  
858 | of the agency is that there is an appropriate, and I think it  
859 | is good government to have inter-agency review--

860 | Ms. MCCOLLUM. So you answered the question, then, it is  
861 | okay to alter science, then?

862 | Mr. JOHNSON. No, that is not what I said.

863 | Ms. MCCOLLUM. Well, you said you were proud of the work  
864 | that your scientists did. You keep referring to the fact  
865 | that you are going to go with scientific information. Yet  
866 | White House policy drivers altered scientific documents, and  
867 | I asked you if you objected to it, yes or no.

868 | Mr. JOHNSON. In my tenure as Administrator, I have not  
869 | experienced that.

870 | Ms. MCCOLLUM. Did you object to it, yes or no?

871 | Mr. JOHNSON. I said, in my experience as EPA

872 Administrator, I have not experienced that. And that has  
873 certainly not been my experience of the past 27 years,  
874 either.

875 Ms. MCCOLLUM. So the White House did not interfere at  
876 all with any of the testimony that has been put forward by  
877 Government-paid scientists, people who work in the pollution  
878 control agency, people who work for the CDC, to your  
879 knowledge, the White House never interferes?

880 Mr. JOHNSON. I can only speak to that of the EPA, and in  
881 my experience it is not--

882 Ms. MCCOLLUM. And if you knew that was happening, if you  
883 knew that was happening, would you speak up and speak out?

884 Mr. JOHNSON. Again, there is a line which I certainly  
885 support and have supported through the years. I think it is  
886 appropriate for testimony and key policy issues to go through  
887 inter-agency review.

888 Ms. MCCOLLUM. I hear what you are saying, you think it  
889 is appropriate for the White House to alter documents, then.

890 Mr. JOHNSON. Well, that is not the case.

891 Ms. MCCOLLUM. That is--well, that is what is going on  
892 here.

893 CO2 occurs naturally. That is a given. But when you  
894 have coal plants and cars emitting more of it, then volume  
895 becomes a problem, and a lot of scientists think it is a  
896 public health problem. In fact, President Bush has decided

897 | that we need to regulate car emissions. So if the Supreme  
898 | Court says you need to be looking at doing your job and  
899 | regulating pollution, you are the pollution control agency,  
900 | the President wants to do something about car emissions, we  
901 | have California, Wyoming, Washington and the northern States  
902 | coming up with creative ideas. The States, after all, are  
903 | the laboratory of which makes this Country strong.

904 |         You feel that you are under no compulsion to regulate  
905 | CO2?

906 |         Mr. JOHNSON. As I have said, we are in the process of  
907 | proposing to regulate greenhouse gas emissions, CO2 is one of  
908 | those, from mobile sources. There are two ways to do it,  
909 | fuel and through the CAFE program. We are proposing that by  
910 | the end of this year--

911 |         Ms. MCCOLLUM. Sir, if I could, when I as a person  
912 | breathe CO2, my lungs doesn't say mobile source, stationary  
913 | source, you are okay, it is from a stationary source, it is a  
914 | public health problem for me to be involved in having  
915 | pollutants around that are affecting climate change. It  
916 | affects my public health, whether it comes from a car or  
917 | whether it comes from a power plant doesn't change the fact  
918 | that it is a pollutant. Am I not correct with that? It is  
919 | not any different if it comes from a car or a power plant, is  
920 | it?

921 |         Mr. JOHNSON. One is you need to be certainly ware of

922 | that the health effects that have been identified by IPCC and  
923 | others are generally characterized as what you would call  
924 | indirect health effects. In other words, the level of carbon  
925 | dioxide for a human of concern is a very high level where  
926 | there is a--

927 | Ms. MCCOLLUM. Mr. Johnson, my question wasn't that--

928 | Mr. JOHNSON.--health consequence. So I just want to  
929 | make sure that you understand the science.

930 | Ms. MCCOLLUM. I understand the science. And I  
931 | understand that it has been altered by this White House. My  
932 | question is, if it is CO<sub>2</sub>, does it make any difference to  
933 | global climate change or to me indirectly for my health  
934 | whether it comes from a mobile source or a stationary source?  
935 | And if it doesn't make any difference, then why aren't you  
936 | regulating it? Because the President of the United States  
937 | thinks we need to regulate it at least at the mobile source  
938 | level. You are the pollution control agency.

939 | Mr. JOHNSON. As I said, we are working through what the  
940 | Supreme Court said. We have made a decision in the context  
941 | of mobile sources that we are going to proceed with and  
942 | propose regulations to propose. We are working through what  
943 | that means for, as well as what the science says, for  
944 | stationary sources. So we are working aggressively but  
945 | deliberatively. As I said, as a 27 year veteran, not only a  
946 | veteran, my background, I am a scientist by training.

947 Chairman WAXMAN. Thank you, Ms. McCollum.

948 Mr. Shays?

949 Mr. SHAYS. Thank you, Mr. Administrator. As I listen to  
950 this, I feel we are all over the lot. Frankly, the  
951 Administration bears the burden of not waking up early to  
952 global warming, in my judgment, and has basically said the  
953 marketplace is going to take care of a lot of these problems.  
954 And I think it does, I think it does it too late.

955 But Congress is reprimanding you for not doing and  
956 enforcing rules and regulations that I don't think we have  
957 given you necessarily the power to do. Because Congress  
958 can't even agree, we are wrestling whether we are going to  
959 have 35 miles per gallon and 15 percent renewable by the year  
960 2020. And it is questionable whether that will pass the House  
961 and pass the Senate.

962 So what we can't pass in law we want you to kind of deal  
963 with administratively. I am struck by the fact that 100 of  
964 the Senators, 100 percent of the Senators, all 100 said, do  
965 not give us a Kyoto Agreement that does not include India and  
966 China. And President Clinton was not able to negotiate China  
967 and India into it. So he never submitted it to the Senate,  
968 because there were only about five Senators who would have  
969 voted for it.

970 I wish to God the President had submitted Kyoto without  
971 prejudice to the Senate, because it probably would have had

972 at best 20 votes. Then we wouldn't have so many Senators  
973 acting like they would have supported it. At least we would  
974 have a more honest dialogue.

975 I am struck by the fact that we want certain things to  
976 happen, like global warming dealt with, but we don't want  
977 nuclear power. We want cleaner air, and my plants in  
978 Connecticut use coal, but we don't want liquified natural  
979 gas. So I am struck by the fact that Europe is dealing with  
980 global warming and we give them credit, but we don't want to  
981 use the same mechanisms they are using to deal with it.

982 So as I listen to this, I think people can throw stones  
983 at you and get away with it, because frankly, the  
984 Administration hasn't been the champion of dealing with  
985 global warming. And that I think is regretful.

986 I am struck by the fact that the Massachusetts v. EPA  
987 said, ``We need not and do not reach the question whether on  
988 reprimand EPA must make an endangered finding or whether  
989 policy concerns can inform EPA's actions in the event that it  
990 makes such a finding. We hold only that EPA must ground its  
991 reasons for actions or inactions in the statute.''

992 Now, what I am hearing in this debate is that you are  
993 legally bound to come to a decision about global warming and  
994 so on that has to go through a process. Whether or not you  
995 feel that CO2 is dangerous to one's health has to go through  
996 a process. That is what I am hearing you say. And you may

997 | and say it is.

998 |         Now, the one thing I am struck with though about CO2 is  
999 | it is not localized. Explain to me what that means. In  
1000 | other words, CO2 spreads out over, it doesn't stay  
1001 | stationary. Tell me if that is a factor in what we are  
1002 | wrestling with. Tell me why some think CO2 is different than  
1003 | other pollutants.

1004 |         Mr. JOHNSON. You have raised a number of very key  
1005 | points. The first is, I think that certainly the issue of  
1006 | global climate change before Congress really helps illustrate  
1007 | the complexity and the difficulty of addressing. Of course,  
1008 | again, I am very proud both of the President's leadership and  
1009 | the agency.

1010 |         Mr. SHAYS. Give me the facts right now, rather than  
1011 | being proud right now.

1012 |         Mr. JOHNSON. We have spent more money than any other  
1013 | country in investing in science. We are going to be  
1014 | regulating--

1015 |         Mr. SHAYS. Let me ask you this question. To the first  
1016 | point of whether you are being responsive or not to the  
1017 | questions asked, what I understand is, you have a court  
1018 | mandate to come back to us. Is that true or not?

1019 |         Mr. JOHNSON. The court mandate clearly lays out that it  
1020 | is a pollutant, then it is up to me as Administrator to  
1021 | determine the issue of endangerment or what the next steps

1022 | will be.

1023 |         Mr. SHAYS. So, one, it is a pollutant, but then the  
1024 | question is what kind?

1025 |         Mr. JOHNSON. The next steps, it is up to us, and as the  
1026 | President has announced, we are proceeding with regulation to  
1027 | regulate it from mobile sources.

1028 |         Mr. SHAYS. Why will it take, by the end of this year and  
1029 | the next--

1030 |         Mr. JOHNSON. We will be proposing.

1031 |         Mr. SHAYS. Will then the question be answered that was  
1032 | asked of you?

1033 |         Mr. JOHNSON. Yes.

1034 |         Mr. SHAYS. So there will be an answer and it will be an  
1035 | official answer going through a process?

1036 |         Mr. JOHNSON. That is correct.

1037 |         Mr. SHAYS. Okay. Tell me the other aspect of CO2.

1038 |         Mr. JOHNSON. CO2 is well mixed in the atmosphere,  
1039 | whereas, other pollutants seem to be localized or can get  
1040 | into the atmosphere. CO2 is among the unique gases that it  
1041 | is well mixed in the atmosphere. In fact, individual sources  
1042 | all contribute to what is effectively a global pool. That is  
1043 | one of the challenges that we face, both in our science  
1044 | understanding but also in the challenge of how are the best  
1045 | ways to address that. As I mentioned to your colleague,  
1046 | clearly technology is going to be the issue, whether it is

1047 mobile source or stationary source or other sources.

1048 Mr. SHAYS. Thank you.

1049 Chairman WAXMAN. Thank you, Mr. Shays.

1050 Mr. Johnson, we are being summoned for a single vote on  
1051 the House Floor. We are going to recess and then continue  
1052 with you. I know that members will want a second round and  
1053 we have some members who haven't even had the first round.

1054 Mr. DAVIS OF VIRGINIA. We have to go cancel each other  
1055 on this vote.

1056 [Laughter.]

1057 [Recess.]

1058 Chairman WAXMAN. The hearing will come back to order.

1059 I am waiting for some of the members who have not had  
1060 their opportunity for a first round, but rather than lose  
1061 this opportunity to question you, I will just take my second  
1062 round.

1063 Any objection?

1064 [Laughter.]

1065 Chairman WAXMAN. Oh, Mr. Sarbanes, you haven't had a  
1066 chance for the first round. Do you want to ask questions  
1067 now? You are welcome to.

1068 Mr. SARBANES. Mr. Chairman, I have no objection.

1069 [Laughter.]

1070 Chairman WAXMAN. Well, thank you very much.

1071 Mr. Johnson, you have indicated that you are considering

1072 | some regulations on mobile sources based on the Supreme Court  
1073 | decision. Now, has your counsel instructed you not to look  
1074 | at the stationary sources, the power plants? Did he say that  
1075 | you don't have the authority to do that?

1076 |         Mr. JOHNSON. That is a very important question. As part  
1077 | of our deliberative process that we are evaluating, as I  
1078 | said, we are very clear that we are going to be proposing to  
1079 | regulate CO2 and greenhouse gases from mobile sources. We  
1080 | are evaluating what the impact of the Supreme Court decision  
1081 | and obviously what we are proposing to do on mobile sources,  
1082 | what impact if any that will have on stationary sources. So  
1083 | it is very much being considered as part of the agency  
1084 | deliberative process.

1085 |         Chairman WAXMAN. I wrote you a letter requesting you  
1086 | provide the Committee with documents relating to the Supreme  
1087 | Court decision. Some of the documents were given to us,  
1088 | others not. But we learned from these documents that EPA has  
1089 | had multiple meetings with the White House about regulating  
1090 | stationary sources of greenhouse gas emissions. Committee  
1091 | staff also reviewed four internal EPA documents that describe  
1092 | what EPA is currently considering in response to the Supreme  
1093 | Court case. Unfortunately, EPA has refused to provide these  
1094 | documents to the Committee prior to today's hearing. Are you  
1095 | familiar with the EPA documents that EPA is currently  
1096 | withholding from the Committee?

1097 Mr. JOHNSON. I am familiar with those, yes, sir.

1098 Chairman WAXMAN. Administrator Johnson, ordinarily I  
1099 understand the need to keep internal strategy documents  
1100 confidential. But these documents are incredibly cynical.  
1101 They show that you are considering issuing the weakest  
1102 possible CO2 standards for power plants at the last possible  
1103 minute before this Administration is out of power. The  
1104 motivation appears to be to preempt the ability of your  
1105 successor to take meaningful action. Unless the President is  
1106 prepared to assert executive privilege over these documents,  
1107 I believe they should be provided to the Committee. If you  
1108 have a secret plan to issue the weakest possible standards at  
1109 the last possible moment, I think they should be exposed to  
1110 the American people.

1111 Is the President going to assert executive privilege  
1112 over our document request?

1113 Mr. JOHNSON. No, not at this time, Mr. Chairman. But  
1114 let me--

1115 Chairman WAXMAN. Is there any reason why we should not  
1116 get these documents?

1117 Mr. JOHNSON. Well, yes, and let me explain. I am  
1118 currently evaluating, both being educated, but also  
1119 evaluating what options may or may not be available and what  
1120 the impact of the Supreme Court decision and the direction we  
1121 are heading on mobile sources, on stationary sources. So we

1122 are very much in a pre-decisional mode. I have not made any  
1123 decisions, and--

1124 Chairman WAXMAN. Well, I am not asking--

1125 Mr. JOHNSON.--what I am very concerned about is the  
1126 chilling effect that would occur within the agency if agency  
1127 employees believed that their frank and candid comments were  
1128 going to be released before I made a decision while I am in  
1129 the decision-making process, that is of grave concern. Mr.  
1130 Chairman, we fully, and I certainly full respect your  
1131 responsibilities as Chairman of the Oversight Committee.  
1132 That is why I had my staff come up and brief you.

1133 But given the fact that we are pre-decisional, I have  
1134 not made any decisions, and this chilling effect it would  
1135 have on my staff providing candid comments, and further, as  
1136 my EPA response to your letter noted, that the Committee  
1137 really hasn't articulated why further access to these  
1138 documents, which really don't discuss the PSD permitting issue  
1139 with Deseret Bonanza, which certainly is my understanding was  
1140 the subject of this Committee's investigation, particularly  
1141 in light of the significant accommodations, we didn't think  
1142 that it would be appropriate to expose those documents at  
1143 this time.

1144 Chairman WAXMAN. When you make accommodations for  
1145 information for the Congress, you are not just doing us a  
1146 favor, you are doing what is required.

1147 Mr. JOHNSON. No, and I fully support that, that is why  
1148 we did it.

1149 Chairman WAXMAN. We are trying to do our job. And our  
1150 job, unless you have a legal reason, I ordinarily expect  
1151 these deliberative processes, but unless you have a legal  
1152 reason to withhold it, what we seem to see is that EPA is in  
1153 your deliberative process, planning not just to address the  
1154 issue in a way that I consider very weak, but deliberating on  
1155 how to make it weak so that you can bind your successors. On  
1156 that basis, I think we are entitled to those documents, and  
1157 we are going to have to confront this issue. But I do  
1158 believe we are entitled to it. If my guess is right as to  
1159 what is happening, I think it is even more imperative that  
1160 the Congress of the United States have access to them.

1161 I want to recognize the gentlelady from California.

1162 Ms. WATSON. Thank you so much, Mr. Chairman.

1163 Administrator Johnson, this morning you testified  
1164 primarily about greenhouse gas emissions of stationary  
1165 sources like power plants. These sources are major  
1166 contributors to climate change, but they are only part of the  
1167 problem. Mobile sources like cars and trucks are also an  
1168 enormous part of the problem.

1169 I represent Los Angeles, California. We are the largest  
1170 State in the Union, and on average, there are six cars per  
1171 one. I was in the Senate for 20 years, and for the last 30

1172 | to 40 years, we have been working to clean up our atmosphere.  
1173 | When I first went to Sacramento and was coming back to my  
1174 | district, it looked like we were going through a valley of  
1175 | tar. It is very, very much cleaner than it was 30 or 40  
1176 | years ago.

1177 |         In 2002, California took action to regulate greenhouse  
1178 | gas emissions of automobiles. And we developed a sensible  
1179 | plan to reduce vehicle emissions and then requested from EPA  
1180 | the necessary waivers in order to enforce our regulations in  
1181 | December of 2005. A dozen States have decided to also adopt  
1182 | California's regulations. In June, we learned that the  
1183 | Department of Transportation had organized an lobbying  
1184 | campaign to generate opposition to our rules.

1185 |         So the Committee, as a result, has been investigating  
1186 | this matter. The Transportation Secretary's Deputy Chief of  
1187 | Staff confirmed to the Committee that the Department of  
1188 | Transportation ``is hoping to solicit comments against  
1189 | California's waiver.'' A number of internal DOT documents  
1190 | indicate that their lobbying campaign was coordinated with  
1191 | the White House and with EPA.

1192 |         Some e-mails, and we have a copy of them, indicate that  
1193 | you spoke with Transportation Secretary Peters about  
1194 | California's waivers. My question directly to you, under  
1195 | oath, did you discuss the California waiver with  
1196 | Transportation Secretary Peters?

1197 Mr. JOHNSON. As I testified before the Senate  
1198 Environment and Public Works Committee--

1199 Ms. WATSON. Yes or no.

1200 Mr. JOHNSON.--as part of our regular and routine  
1201 conversations--

1202 Ms. WATSON. Yes or no.

1203 Mr. JOHNSON.--I contacted Secretary Peters to give her  
1204 an update on the status of several actions before the agency.  
1205 One of the items I wanted to notify her of was of the  
1206 comment period on the California--

1207 Ms. WATSON. So the answer is yes.

1208 Mr. JOHNSON.--waiver request was closing, that I had  
1209 received requests for extension, which I was inclined to  
1210 deny--

1211 Ms. WATSON. Okay, you answered my question.

1212 Chairman WAXMAN. The gentleman has answered the  
1213 question, Ms. Watson.

1214 Ms. WATSON. Yes, I am going on to the next.

1215 Did she tell you that she was going to lobby governors  
1216 and members of Congress to oppose California's request?

1217 Mr. JOHNSON. I do not recall any specific discussion  
1218 regarding contacting Congressional offices, including  
1219 particularly whether to solicit opinions on the California  
1220 waiver.

1221 Ms. WATSON. Did you discuss DOT's lobbying plan with

1222 Secretary Peters or anyone else at DOT?

1223 Mr. JOHNSON. I do recall asking Secretary Peters whether  
1224 she was aware of anyone else seeking an extension on the  
1225 comment period. Of course, a day after that, I instructed my  
1226 staff to deny the request for an extension of the comment  
1227 period.

1228 Chairman WAXMAN. The gentleman does not seem to answer  
1229 the question. Did she tell you that she was going to lobby  
1230 governors as well as members of Congress? You answered  
1231 members of Congress.

1232 Mr. JOHNSON. I don't recall any discussion of lobbying--

1233 Ms. WATSON. You don't recall?

1234 Mr. JOHNSON. Of lobbying.

1235 Ms. WATSON. Okay. Let me see if I can get through my  
1236 questions, because I see the lights. On May 23rd, 2007,  
1237 DOT's chief of staff sent an e-mail that suggests you might  
1238 have asked Secretary Peters to initiate this lobbying  
1239 campaign, and the e-mail states, Johnson asked her to do this  
1240 yesterday.

1241 Now, Mr. Johnson, did you ask Secretary Peters to  
1242 initiate the lobbying campaign?

1243 Mr. JOHNSON. I have answered the question of what I  
1244 discussed with her and asked of her. And I did not ask her  
1245 to lobby.

1246 Ms. WATSON. Another internal DOT e-mail indicates that

1247 | the White House staff discussed the California waiver and the  
1248 | DOT's lobbying effort with you. Did you discuss the lobbying  
1249 | effort with anyone at the White House?

1250 |         Mr. JOHNSON. I don't recall having any discussion on  
1251 | that topic with anyone in the White House.

1252 |         Ms. WATSON. Okay. Now, remember, Administrator Johnson,  
1253 | you are under oath, can you promise us now that you will  
1254 | decide California' request for a waiver purely upon the  
1255 | merits of the request and not based on political factors?

1256 |         Mr. JOHNSON. I can assure you that under the Clean Air  
1257 | Act, it is the responsibility of me to make a decision,  
1258 | independent, based upon the record. I intend to do so, and I  
1259 | have committed to the Governor to have that decision made by  
1260 | the end of the year. As you are probably well aware, this  
1261 | waiver request--

1262 |         Ms. WATSON. As what is all aware?

1263 |         Mr. JOHNSON. I was just going to say--

1264 |         Ms. WATSON. As Republicans are all aware?

1265 |         Mr. JOHNSON. No, as everyone is well aware, we have over  
1266 | 100,000 comments, literally thousands of pages of comments,  
1267 | of technical and scientific comments, that are expeditiously  
1268 | yet responsibility reviewing.

1269 |         Ms. WATSON. My time is over. Let me just make this last  
1270 | statement, Mr. Chairman, if I may. My understanding that  
1271 | California is filing suit today against you for failure to

1272 | grant their waiver and the Administration's approach to this  
1273 | matter has been completely irresponsible and rather than  
1274 | working with the States to increase environmental protection,  
1275 | the Administration has waged a secret effort to undermine it.

1276 |         Thank you so much, Mr. Chairman.

1277 |         Chairman WAXMAN. Thank you, Ms. Watson.

1278 |         Mr. Johnson, in her May 31st e-mail to her chief of  
1279 | staff, Secretary Peters refers to ``calls to the governors on  
1280 | the issue I had discussed with Administrator Johnson.'' So  
1281 | she said, in her e-mails, referred to a conversation with you  
1282 | to call the governors. And on June 6th, the Secretary's  
1283 | executive assistant wrote, ``Administrator Johnson has just  
1284 | called and would like to speak with S1 this morning,'' and  
1285 | Mr. Duvall, the Assistant Secretary, responded, okay, they  
1286 | think it may be about the California waiver. Why would  
1287 | Secretary Peters say that she had discussed this with you  
1288 | about lobbying the governors?

1289 |         Mr. JOHNSON. Mr. Chairman, I can't speculate on what  
1290 | e-mails that either the Secretary or that occurred within the  
1291 | Department of Transportation. As I have stated for the  
1292 | record and under oath, I do recall asking Secretary Peters  
1293 | whether she was aware of anyone seeking an extension on the  
1294 | comment period. That was the purpose of my phone call.  
1295 | Whether or not there was a need, was she aware of anyone want  
1296 | to extend the comment period.

1297 Chairman WAXMAN. Why would you make that phone to the  
1298 Secretary?

1299 Mr. ISSA. Point of order, Mr. Chairman.

1300 Chairman WAXMAN. The Chairman has the right. Why would  
1301 you make--

1302 Mr. ISSA. Point of order, Mr. Chairman. The rules of  
1303 the House and the rules of this Committee call for five  
1304 minutes per side divided. It does not have a separate--

1305 Chairman WAXMAN. I understand the rule. But on behalf  
1306 of the Governor of our State and in the interest of our  
1307 State, I want an answer to this question. Why would you have  
1308 made the call--

1309 Mr. ISSA. Mr. Chairman, it is my State, too. I ask for  
1310 regular order.

1311 Chairman WAXMAN. The gentleman has made a point. I am  
1312 just going to ask you to answer this one question. Why would  
1313 you have called the Secretary of Transportation about this  
1314 issue at all?

1315 Mr. JOHNSON. Because I know that she is very interested  
1316 in issues of transportation. This is an issue of whether she  
1317 was aware that there was anyone who was going to ask for an  
1318 extension of public comment period, and as I said to her, and  
1319 certainly I would ask that my statement, the comments made  
1320 before the Senate EPW be made part of the record here, is  
1321 that I said I was inclined to not approve, and a day later,

1322 that is what I did.

1323 Chairman WAXMAN. Okay, thanks.

1324 Mr. JOHNSON. That is the extension of the comment  
1325 period, to be clear.

1326 Chairman WAXMAN. Mr. Sali, I think it is your turn next.

1327 Mr. SALI. Thank you, Mr. Chairman.

1328 If we were going to deal with all of the sources of  
1329 carbon emission, greenhouse gases, what would do us the most  
1330 good? Where could we make the most impact?

1331 Mr. JOHNSON. Well, it is clear that one is, it is  
1332 important that as we reflect on the Supreme Court decision  
1333 and the complexity of the Supreme Court decision, as well as  
1334 the complexity of technology and science, that we look at all  
1335 of these issues. It is clear that electric generating units  
1336 are the major source of carbon dioxide in the United States.  
1337 Second is transportation. Then third, there are a variety of  
1338 other sources.

1339 Of course, before the agency, given the Supreme Court  
1340 decision in Massachusetts v. EPA, the focus is on mobile  
1341 sources. So we are, as I have already mentioned, going to be  
1342 proposing regulating CO2, greenhouse gases, from mobile  
1343 sources by the end of this year. And as we prepare that  
1344 proposed regulation, we are also considering what the impacts  
1345 of the Supreme Court decision and our action on mobile  
1346 sources will have on these other, including stationary

1347 sources. So we are very much on an internal, deliberative,  
1348 thoughtful process. I have made no decisions. It is an  
1349 important issue, it is a complex issue and we are working  
1350 diligently and expeditiously, but responsibly.

1351 Mr. SALI. In the State of Idaho, we had over 2 million  
1352 acres of forest land that burned up this year. My guess  
1353 would be that that would be a significant source of carbon  
1354 and other types of gases that might contribute to global  
1355 warming. You didn't include that in your list of sources,  
1356 and I am wondering, is there any effort on the part of the  
1357 EPA to look outside of the sources that you have described  
1358 here?

1359 By way of reference, I understand that the fires in the  
1360 Yukon, in Canada and Alaska in 2004, a pretty significant  
1361 fire, emitted as much carbon as all man-made sources in all  
1362 of the continental United States for the rest of the year,  
1363 just that one fire. Has your agency looked at any of that as  
1364 a way to perhaps deal with the balance of where we should  
1365 look to get the most bang for the buck?

1366 Mr. JOHNSON. EPA does not regulate forests, and of  
1367 course, under the President's Healthy Forests Initiative, a  
1368 key feature of that is to help to manage in a better way  
1369 potential outcomes or adverse outcomes like forest fires.

1370 With regard to the pollution that is emitted from forest  
1371 fires, that is something that through a variety of monitoring

1372 stations that we have, or that the States have in place, or  
1373 tribes have in place, are often picked up, and we have to  
1374 assess that as part of whether, in fact, States or tribes are  
1375 in compliance with the Clean Air Act.

1376 Mr. SALI. Well, isn't it possible, though, that you are  
1377 contributing carbon or other types of emissions to stationary  
1378 or mobile sources that might be coming from forest fires?

1379 Mr. JOHNSON. Certainly, combustion of product  
1380 contributes to greenhouse gas emissions.

1381 Mr. SALI. How shall we, as a Committee, dealing with  
1382 oversight of this, how should we proceed? Because we  
1383 apparently want a more comprehensive view than your agency is  
1384 charged with. What suggestions would you have for us?

1385 Mr. JOHNSON. That is a great question. I don't have any  
1386 answer off the top of my head, but certainly look forward to  
1387 working with you as you address the whole issue of global  
1388 climate change. I did also want to mention that we are one  
1389 of the ones in the Federal Government that actually maintains  
1390 and does the accounting and inventory of greenhouse gas  
1391 emissions for reporting, not only to the public, but as well  
1392 as the U.N. framework for climate change. So we can look and  
1393 we have looked and will continue to look over the years to  
1394 see what the trends are, if we are aware of any influences,  
1395 like major forest fires.

1396 Again, from a science perspective, it is often difficult

1397 | to discern in these local conditions of how they contribute  
1398 | to this global problem of greenhouse gas emissions. I look  
1399 | forward to working with you.

1400 |         Mr. SALI. Do I hear you committing that you are going to  
1401 | be looking at that as you go forward?

1402 |         Mr. JOHNSON. I will be happy to work with you and our  
1403 | colleagues who have oversight responsibility, regulatory  
1404 | authority for our forests in the Nation, not only the U.S.  
1405 | Department of Agriculture and the Department of Interior.

1406 |         Mr. SALI. Thank you, Mr. Chairman.

1407 |         Chairman WAXMAN. Thank you, Mr. Sali.

1408 |         Mr. Kucinich?

1409 |         Mr. KUCINICH. Thank you, Mr. Chairman.

1410 |         Mr. Johnson, you called Secretary Peters at the  
1411 | Department of Transportation to tell her about the closing of  
1412 | the comment period with respect to the California waiver  
1413 | issue, is that not correct?

1414 |         Mr. JOHNSON. It would be a better characterization that  
1415 | I have regular and routine conversations with my Cabinet  
1416 | colleagues. During one of those routine conversations, I  
1417 | mentioned that subject. There were other subjects that we  
1418 | talked about. But I--

1419 |         Mr. KUCINICH. But you did call her to tell her about the  
1420 | closing of comment period?

1421 |         Mr. JOHNSON. As I said, there were other topics that I

1422 | talked to her about.

1423 |         Mr. KUCINICH. What else did you talk to her about?

1424 |         Mr. JOHNSON. On that particular day that I talked to  
1425 | her, I was supposed to be testifying in two days. The head  
1426 | of NHTSA was supposed to testify with me. I talked to her  
1427 | and said that I was going to be calling one of her senior  
1428 | people to ask if there were any questions--

1429 |         Mr. KUCINICH. So you talked about many things. Now, did  
1430 | you call the Energy Secretary to tell the Energy Secretary  
1431 | that the comment period was closing?

1432 |         Mr. JOHNSON. Again, this was dealing with transportation  
1433 | issues, and I did not talk to, I don't recall talking to the  
1434 | Secretary. That is my recollection.

1435 |         Mr. KUCINICH. Did you talk to the Energy Secretary?

1436 |         Mr. JOHNSON. I have routine conversations with--

1437 |         Mr. KUCINICH. Did you talk to the Energy Secretary about  
1438 | the closing of the comment period?

1439 |         Mr. JOHNSON. To the best of my recollection, no.

1440 |         Mr. KUCINICH. Did you talk to the Commerce Secretary  
1441 | about the closing of the comment period?

1442 |         Mr. JOHNSON. To the best of my recollection on this  
1443 | issue, no, but again, I have routine conversations with  
1444 | Secretary Guitierrez as well.

1445 |         Mr. KUCINICH. Good enough. Did you talk to anybody in  
1446 | the Executive Office Building about the closing of the

1447 comment period?

1448 Mr. JOHNSON. I don't recall having a conversation with  
1449 anybody there.

1450 Mr. KUCINICH. Did you talk with anybody in the coal  
1451 industry about the closing of the comment period?

1452 Mr. JOHNSON. No, I did not.

1453 Mr. KUCINICH. Did you meet with anybody in the coal  
1454 industry in terms of promulgating rules with respect to the  
1455 decision that the EPA made with respect to approval of new  
1456 power plants?

1457 Mr. JOHNSON. I personally did not.

1458 Mr. KUCINICH. Did anybody on your staff talk to people  
1459 in the power industry?

1460 Mr. JOHNSON. As part of a routine permitting process,  
1461 staff in our regions do meet with the permittee.

1462 Mr. KUCINICH. Why did you call the Department of  
1463 Transportation Secretary, since there seemed to be a close  
1464 coincidence between the time that the closing period was  
1465 coming up and the occasion of your call? At the time that  
1466 the closing period was coming up, did that have something to  
1467 do with your initiating that call to her?

1468 Mr. JOHNSON. Again, I contacted Secretary Peters to give  
1469 her an update on the status of several actions before the  
1470 agency. And one of the items I wanted to notify her of was  
1471 that the comment period on the California waiver request was

1472 closing. While I had received request for extension, I was  
1473 inclined to deny these requests. And I--excuse me?

1474 Mr. KUCINICH. Did you tell your general counsel that you  
1475 were leaning toward not extending the comment period, but you  
1476 wanted people to know that you had the discretion to accept  
1477 late-filed comments?

1478 Mr. JOHNSON. That is under the Clean Air Act and under  
1479 petition process acceptable procedure.

1480 Mr. KUCINICH. And did your general counsel then  
1481 communicate that legislators and governors should not despair  
1482 if they can't meet the June 15th deadline?

1483 Mr. JOHNSON. I don't recall that conversation.

1484 Mr. KUCINICH. I want to submit for the record, Mr.  
1485 Chairman, the appropriate citation here.

1486 Chairman WAXMAN. Without objection.

1487 [Referenced information follows:]

1488 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1489 Mr. KUCINICH. I am really concerned we have a condition  
1490 here where we see the EPA defending a flawed legal  
1491 interpretation of the Clean Air Act all the way to the  
1492 Supreme Court, delaying approving the waiver necessary for  
1493 California to enforce its regulation of greenhouse gases,  
1494 granting permits to coal-fired plants without even  
1495 considering alternatives for reducing greenhouse gas  
1496 emissions. Mr. Chairman, when I listen to this recitation,  
1497 you are supposed to be the Environmental Protection Agency,  
1498 Mr. Johnson. It seems that under the Bush Administration,  
1499 the EPA is beginning to be better described as Every  
1500 Polluters Ally.

1501 Thank you, Mr. Chairman.

1502 Chairman WAXMAN. If the gentleman would yield to me, I  
1503 find this very hard to believe.

1504 Mr. KUCINICH. I will yield remaining time to the Chair.

1505 Chairman WAXMAN. I find this very hard to believe. You  
1506 took the time to call the Secretary of Transportation about a  
1507 comment period, but you didn't call the Secretary of Commerce  
1508 and you didn't call the Secretary of Energy, who also have an  
1509 interest in this rule. Is that your testimony?

1510 Mr. JOHNSON. As I have stated, to the best of my  
1511 recollection, as part of my regular and routine  
1512 conversations, I contacted Secretary Peters--

1513 Chairman WAXMAN. Well, wait a second. Rather than read

1514 | your statement back to me, because obviously you have it  
1515 | there in writing, you are a busy man. Did you know at the  
1516 | time you called her that she was engaged in a lobbying effort  
1517 | against the California waiver?

1518 |         Mr. JOHNSON. I did not, no. To the best of my  
1519 | recollection, I did not, no.

1520 |         Chairman WAXMAN. Well, I am glad you threw in the best  
1521 | of recollection, I did not know, because you are afraid of  
1522 | maybe saying I did not know might be contradicted? I mean,  
1523 | you are under oath, so it sounds like to me like--

1524 |         Mr. JOHNSON. No, Mr. Chairman--

1525 |         Chairman WAXMAN. Were you briefed by--

1526 |         Mr. JOHNSON.--I have routine and--

1527 |         Chairman WAXMAN. Excuse me, Mr. Johnson, I am in the  
1528 | middle of a question.

1529 |         Mr. JOHNSON. I am trying to answer your question, sir.

1530 |         Chairman WAXMAN. Were you briefed by your lawyer how to  
1531 | say things so that you wouldn't be committing perjury?

1532 |         Mr. JOHNSON. Mr. Chairman, I have regular and routine  
1533 | conversations with members of the Cabinet--

1534 |         Chairman WAXMAN. But not the others. Only with the  
1535 | Secretary of Transportation on this issue.

1536 |         Mr. JOHNSON. I have routine and regular conversations  
1537 | with members of the Cabinet. And I recall the conversation I  
1538 | had with Secretary Peters. I testified before the Senate

1539 EPW. To the best of my recollection, that testimony reflects  
1540 my remembrance of the conversation.

1541 Chairman WAXMAN. We will incorporate that testimony by  
1542 reference. But I want to ask you, did you know at the time  
1543 you had that conversation with her that the Department of  
1544 Transportation, which was losing jurisdiction over CAFE  
1545 standards to EPA, did you know that the Department of  
1546 Transportation was unhappy about it and was trying to lobby  
1547 against California getting this waiver?

1548 Mr. JOHNSON. Mr. Chairman, I stand by my statement  
1549 that--

1550 Chairman WAXMAN. Which is?

1551 Mr. JOHNSON. Which is, I do recall asking Secretary  
1552 Peters whether she was aware of anyone else seeking an--

1553 Chairman WAXMAN. No, no, you didn't answer me. Did you  
1554 know what her view was and did you know she was lobbying  
1555 against the California waiver?

1556 Mr. JOHNSON. As I said, this is the best of my  
1557 recollection of the conversation.

1558 Chairman WAXMAN. Which is?

1559 Mr. JOHNSON. Which I will be happy to read to you.

1560 Chairman WAXMAN. No, I don't want you to read to me a  
1561 prepared statement. I asked you a simple question. Did you  
1562 know at the time you called her to presumably say you have an  
1563 extension, do you know of anybody who wants an extension on

1564 | time for filing comments, did you know that she was lobbying  
1565 | against the California waiver and she did not want the  
1566 | California waiver?

1567 |       Mr. JOHNSON. Mr. Chairman, there are many, many opinions  
1568 | on the topics that are--

1569 |       Chairman WAXMAN. Did you know what her views were at  
1570 | that time and that she was involved in trying to undercut the  
1571 | California waiver? Did you know, yes or no?

1572 |       Mr. JOHNSON. Mr. Chairman, to the best of my  
1573 | recollection, the statement reflects the conversation and  
1574 | what I remember of that conversation.

1575 |       Chairman WAXMAN. Did you have a conversation with her on  
1576 | any other rule that you have had before the EPA?

1577 |       Mr. JOHNSON. I have had other conversations with her on  
1578 | other rules, yes.

1579 |       Chairman WAXMAN. About extension of comment periods? Do  
1580 | you call her regularly when you have a rule to ask her about  
1581 | extension of comment periods?

1582 |       Mr. JOHNSON. Again, I have routine and regular  
1583 | conversations with her on a variety of topics.

1584 |       Chairman WAXMAN. You are not answering the question, and  
1585 | I guess there is a reason for your not answering the  
1586 | question. Because we did submit that there are multiple  
1587 | e-mails, in our letter to you, the continuing references to  
1588 | communications between EPA, the Transportation Department and

1589 | the White House. We have an e-mail that says on May 25th,  
1590 | the Secretary's executive assistant e-mailed your chief of  
1591 | staff to say, ``Spoke with Steve Johnson, the EPA  
1592 | Administrator, before approving the Secretary's calls to the  
1593 | governors.'' And further, in a May 31st e-mail to her chief  
1594 | of staff, Secretary Peters refers to calls to the governors  
1595 | on the issue I had discussed with Administrator Johnson. Do  
1596 | you think she was calling the governors to see if they wanted  
1597 | more time to submit comments?

1598 |         Mr. JOHNSON. Mr. Chairman, what Secretary Peters did or  
1599 | her staff did in the e-mails I am not accountable for and I  
1600 | can't speculate.

1601 |         Chairman WAXMAN. Well, you are accountable for your  
1602 | answers.

1603 |         Mr. JOHNSON. I can't speculate on what they did or  
1604 | didn't do.

1605 |         Chairman WAXMAN. You are accountable for your answers  
1606 | here under oath and you have refused to answer some of these  
1607 | questions directly.

1608 |         Mr. JOHNSON. Mr. Chairman, I have given you the best of  
1609 | my recollection.

1610 |         Chairman WAXMAN. On June 6th, the Secretary's executive  
1611 | assistant wrote, ``Administrator Johnson just called and  
1612 | would like to speak with S1,'' oh, S1 is Secretary Peters,  
1613 | ``this morning.'' So S1 means Secretary Peters.

1614 Administrator Johnson just called and would like to speak  
1615 with we will say Secretary Peters this morning. Mr. Duvall,  
1616 the Assistant Secretary, responded, ``Okay, they think it  
1617 might be about the California wavier.`` So within the  
1618 Department of Transportation, they didn't think you were  
1619 calling about extensions of time to file comments. They  
1620 thought you were calling about her campaign to stop the  
1621 California waiver.

1622 Did you ever discuss with Secretary Peters efforts to  
1623 undermine or efforts--no, did you ever discuss with Secretary  
1624 Peters her views about the California waiver?

1625 Mr. JOHNSON. As I said, Mr. Chairman--

1626 Chairman WAXMAN. In the substance.

1627 Mr. JOHNSON.--I talked to her about the extension of the  
1628 comment period for the California waiver petition. That was  
1629 the nature and the extent of the conversation to the best of  
1630 my recollection.

1631 Chairman WAXMAN. And therefore, you did not talk to her  
1632 about her desire to not see the California waiver granted?

1633 Mr. JOHNSON. Again, under the Clean Air Act, it is the  
1634 responsibility of me to make an independent decision on the  
1635 California waiver petition. I intend to do that, and I  
1636 promised the Governor that I would make that decision by the  
1637 end of the year.

1638 Chairman WAXMAN. Well, I just would repeat that it makes

1639 | no sense, a busy man like you, would take the time to call  
1640 | the Secretary of Transportation and ask her whether she knew  
1641 | of people who wanted extensions of time to comment on the  
1642 | California waiver, I guess unless you thought that she was  
1643 | going to have extension of times for people to comment  
1644 | against the California waiver. Is that an accurate  
1645 | statement?

1646 |         Mr. JOHNSON. No.

1647 |         Chairman WAXMAN. You didn't think that was why she would  
1648 | have an interest in the extension of time? Why wouldn't you  
1649 | think the Secretary of Energy would have an interest in that  
1650 | issue?

1651 |         Mr. JOHNSON. It is a transportation issue.

1652 |         Chairman WAXMAN. Aha. Well, it is an energy issue. How  
1653 | about the Secretary of Commerce? It certainly affects the  
1654 | commerce in this Country.

1655 |         Mr. JOHNSON. Again, it is a transportation issue. And I  
1656 | have routine conversations, again--

1657 |         Chairman WAXMAN. Yes.

1658 |         Mr. JOHNSON.--with my Cabinet colleagues on a wide range  
1659 | of issues. I think that is good government, for the Cabinet  
1660 | members to talking with one another.

1661 |         Chairman WAXMAN. Do you know where in the Clean Air Act  
1662 | it says that this is a transportation issue and involves the  
1663 | Secretary of Transportation? Or does it say that the

1664 California waiver is to be approved or not approved by the  
1665 Environmental Protection Agency? And do you know whether any  
1666 previous EPA Administrator ever called the Secretary of  
1667 Transportation before they approved the California waiver?  
1668 There have been many approved over the years, as well as  
1669 other States' requests.

1670 Mr. JOHNSON. Again, the responsibility, as you correctly  
1671 point out, for making a decision on the California waiver,  
1672 rests with me as Administrator of the Environmental  
1673 Protection Agency.

1674 Chairman WAXMAN. Do you feel it is important to get  
1675 input from the Department of Transportation on that issue?

1676 Mr. JOHNSON. I think that it is important for me to make  
1677 that independent decision under the Clean Air Act. I also  
1678 think that it is important to have routine conversations with  
1679 my Cabinet colleagues on a wide range of issues.

1680 Chairman WAXMAN. I know you have said Cabinet colleagues  
1681 on a wide range of issues, but you only talk about one  
1682 Cabinet colleague. The others you didn't think had a view on  
1683 this question.

1684 Mr. JOHNSON. Again, this was not the only topic that we  
1685 discussed that day.

1686 Chairman WAXMAN. What else did you talk about?

1687 Mr. JOHNSON. Again, to the best of my recollection, my  
1688 statement, I did add one additional thing. Again, I recall

1689 | talking to her about the upcoming hearing that I was going to  
1690 | be sharing the witness stand with the head of NHTSA, and that  
1691 | I was going to be calling. I wanted to tell her that I was  
1692 | going to be calling the head of NHTSA to make sure that we  
1693 | were both prepared for the upcoming hearing.

1694 | Chairman WAXMAN. And had you coordinated that with the  
1695 | White House, for the upcoming hearing?

1696 | Mr. JOHNSON. To the best of my recollection, I had not  
1697 | had a discussion with the White House, other than again, as  
1698 | part of a routine process for clearance of testimony.

1699 | Chairman WAXMAN. What was the upcoming hearing that you  
1700 | were concerned about?

1701 | Mr. JOHNSON. At this point in time, I don't recall what  
1702 | the hearing was.

1703 | Chairman WAXMAN. A Congressional hearing?

1704 | Mr. JOHNSON. It was a Congressional hearing, yes.

1705 | Chairman WAXMAN. I see. So what did it have to do with  
1706 | the California waiver?

1707 | Mr. JOHNSON. I don't recall at this moment what the  
1708 | specifics were for the hearing. We can certainly go back as  
1709 | a matter of record what the hearing and the specific topics  
1710 | were. But I wanted to, as again, I think it is good  
1711 | government to have inter-agency coordination. That is what I  
1712 | have done for the past 27 years and I think that is good  
1713 | government for the future.

1714 Chairman WAXMAN. Did you want to make sure that you and  
1715 the NHTSA representative were on the same wavelength in terms  
1716 of your views?

1717 Mr. JOHNSON. No. Again, I don't recall the specifics of  
1718 that particular hearing. But I wanted to ask if there were  
1719 any questions or if they had any questions of me.

1720 Chairman WAXMAN. Okay, so you called her about anybody  
1721 she knows that wants an extension of time to submit opinions  
1722 on the waiver, and you also talked to her about this upcoming  
1723 hearing, so that you and the NHTSA representative would be  
1724 representing Administration policy. Any other topics you  
1725 remember?

1726 Mr. JOHNSON. I don't recall. I think there were, but I  
1727 don't recall what they were.

1728 Chairman WAXMAN. How many conversations have you had  
1729 with her on this subject? How many conversations have you  
1730 had with her that might have led people in her office to  
1731 think that you were talking to her about the subject of the  
1732 California wavier?

1733 Mr. JOHNSON. The vast majority of my conversations with  
1734 her have been on our development of the rulemaking for mobile  
1735 sources, particularly on that portion dealing with CAFE.

1736 Chairman WAXMAN. I see. So were these conversations  
1737 after the Supreme Court decision?

1738 Mr. JOHNSON. Yes.

1739 Chairman WAXMAN. And if the Supreme Court had not made  
1740 the decision it had made, would you be talking to her about  
1741 the California waiver?

1742 Mr. JOHNSON. If the Supreme Court had not made the  
1743 decision it was a pollutant, then it wouldn't be regulated  
1744 under the Clean Air Act, and then we wouldn't be having that  
1745 conversation.

1746 Chairman WAXMAN. But California waiver wasn't dependent  
1747 on the Supreme Court decision, was it? The California waiver  
1748 is a long-established practice under the Clean Air Act.  
1749 California was way ahead of EPA in establishing tighter  
1750 standards. So we have always said California may go on its  
1751 own and has permission, has to get a waiver to permit  
1752 California to do that. That had nothing to do with that  
1753 Supreme Court decision, did it?

1754 Mr. JOHNSON. Mr. Chairman, as we noted to California  
1755 that the Supreme Court would have, because if it was not a  
1756 pollutant under the Clean Air Act, then what authority would  
1757 there be, or then how would the Clean Air Act then apply to  
1758 the waiver petition, which is Section 209 of the Clean Air  
1759 Act? So it was very relevant, and that is why we told  
1760 California that clearly, the decision that was pending before  
1761 the Supreme Court could have a dramatic effect on whether or  
1762 not, depending upon their outcome. And of course, once the  
1763 Supreme Court made the decision it was a pollutant, then I

1764 acted very quickly to initiate the public, the actual  
1765 statutory process of holding a hearing. The Governor asked  
1766 me if I would hold an additional hearing out in the State of  
1767 California, which we did. And as I have mentioned, we have  
1768 approximately 100,000 comments.

1769 Admittedly, many of those comments, or a few were repeat  
1770 comments; nonetheless, we still need to consider those.

1771 Chairman WAXMAN. How many conversations did you have  
1772 with Secretary Peters about the Supreme Court issue?

1773 Mr. JOHNSON. I don't recall, Mr. Chairman?

1774 Chairman WAXMAN. More than one?

1775 Mr. JOHNSON. Yes, definitely more than one.

1776 Chairman WAXMAN. More than five?

1777 Mr. JOHNSON. Likely, but I don't recall.

1778 Chairman WAXMAN. And why did you feel it was important  
1779 to talk to her about the Supreme Court issue of a decision  
1780 that said you now can regulate?

1781 Mr. JOHNSON. We were having multiple conversations,  
1782 inter-agency conversations as we were looking at the impact  
1783 of the Supreme Court decision.

1784 Chairman WAXMAN. Do you recall her telling you in any of  
1785 these conversations that she thought it was not a good idea  
1786 to give California the waiver?

1787 Mr. JOHNSON. I don't recall. As I said, there are many,  
1788 many--

1789 Chairman WAXMAN. Really, why wouldn't she tell you if  
1790 she is telling all these governors and Congressmen she  
1791 doesn't like the California position and request? Why  
1792 wouldn't she tell you? It is hard to believe she--maybe she  
1793 did?

1794 Mr. JOHNSON. Sir, there are many, many opinions on the  
1795 California waiver, as well as other issues that are before  
1796 the agency. It is my responsibility to make a decision  
1797 independently based upon--

1798 Chairman WAXMAN. I understand that, and I have every  
1799 confidence--I hope--that you will do that. But I am asking  
1800 whether the Secretary of Transportation, since you were  
1801 talking to her about the subject, ever said, by the way, I  
1802 don't think you ought to grant that California waiver?

1803 Mr. JOHNSON. Again, the nature of our conversation was  
1804 with regard to the comment period and the extension of the  
1805 comment period.

1806 Chairman WAXMAN. But that wasn't the exclusive and only  
1807 subject?

1808 Mr. JOHNSON. No. Again, as I have said, there were  
1809 other topics that we talked about.

1810 Chairman WAXMAN. And you had more than five  
1811 conversations. So you didn't talk about the extension of the  
1812 filing period on every conversation, I assume.

1813 Mr. JOHNSON. No.

1814 Chairman WAXMAN. So what did you talk about in the other  
1815 conversations?

1816 Mr. JOHNSON. Well, as I said, generally one topic area  
1817 that we have had a lot of conversations, as I have had with  
1818 the Secretary of Agriculture, as I have had also with the  
1819 Secretary of Energy, under the context of, when the President  
1820 made the decision that we were going to be moved forward with  
1821 taking the steps to regulate greenhouse gases from mobile  
1822 sources, he issued an executive order. As part of that  
1823 executive order, he directed us to make sure that were  
1824 working together, including the Department of Transportation,  
1825 the EPA, the Department of Agriculture, as well as the  
1826 Department of Energy. So we have had numerous conversations.

1827 Chairman WAXMAN. Okay. Well, Mr. Kucinich's time has  
1828 expired, so I will now recognize Mr. Sarbanes.

1829 Mr. SARBANES. Thank you, Mr. Chairman.

1830 Administrator Johnson, obviously EPA has the ability to  
1831 directly influence a lot of things with respect to global  
1832 warming and to take the measures that everyone seems to be  
1833 calling for, at least the consensus that is emerging these  
1834 days, to regulate those more effectively, greenhouse gas  
1835 emissions and other emissions that are harming the  
1836 environment.

1837 But you also have a lot of ability to influence what the  
1838 States do by setting a standard, by looking over their

1839 | shoulder in appropriate cases and making sure that you are  
1840 | modeling for them the kinds of measures that ought to be  
1841 | taken. I think there is high concern among some members of  
1842 | this Committee that that role isn't being performed  
1843 | adequately either. You have some States that really are  
1844 | taking a leadership role with respect to global warming and  
1845 | regulating these emissions. New Mexico is a good example of  
1846 | that in terms of requiring new plants to have cleaner  
1847 | technology as part of their operation.

1848 |         But then you have other States that are really  
1849 | permitting these huge new coal-fired power plants to come  
1850 | online that don't have any kind of controls over greenhouse  
1851 | gas emissions. It doesn't appear that the EPA is urging  
1852 | States as it should be, taking a leadership role in urging  
1853 | States to require these pollution controls. I guess that is  
1854 | not surprising, given that EPA is not acting in those arenas  
1855 | where it has direct authority, why would we expect it to act  
1856 | in those where it has the ability to influence or cajole or  
1857 | push States to do the right thing?

1858 |         Let me give you a concrete example. The State of North  
1859 | Carolina is considering a new coal-fired power plant which  
1860 | has been proposed by Duke Energy at Cliffside Facility, which  
1861 | is near the Great Smoky Mountains National Park. This plant  
1862 | doesn't use advanced technology. As an aside, it is  
1863 | incredible to me that we are building and bringing online new

1864 | plants that don't have this technology.

1865 |         But in any event, first of all, are you aware of this  
1866 | proposal that is out there?

1867 |         Mr. JOHNSON. I am not aware of that specific proposal,  
1868 | no, I am not.

1869 |         Mr. SARBANES. Okay. Because EPA did submit comments on  
1870 | the permit application for this plant, as you would want them  
1871 | to do. Unfortunately, it didn't mention in those comments  
1872 | any of the potential effect on global warming that the  
1873 | absence of this kind of advanced technology would have. It  
1874 | didn't ask the State to consider requiring coal gasification  
1875 | to reduce greenhouse gas emissions and looking at capturing  
1876 | and sequestering those emissions. You're not aware of it,  
1877 | which is a surprise to me, but don't you think that the EPA  
1878 | should have been recommending these kinds of measures that  
1879 | North Carolina take with respect to greenhouse gas emissions?

1880 |         Mr. JOHNSON. Again, each permit needs to be evaluated on  
1881 | a case by case basis and within the context of what the  
1882 | current law is. As I have already mentioned, we are  
1883 | aggressively, yet responsibly, trying to sort through what  
1884 | the impact of the Supreme Court decision is on mobile sources  
1885 | and what that means for stationary sources. We are right now  
1886 | in a deliberative process. In the meantime, we will look at  
1887 | these on a case by case basis, based upon existing law.

1888 |         Mr. SARBANES. Well, this is really the role of

1889 | leadership. It is less about where your authority is than  
1890 | about understanding the science, taking a leadership role  
1891 | with respect to the kinds of technologies that ought to be  
1892 | deployed out there, and encouraging States to do that kind of  
1893 | thing, rather than looking the other way or becoming a sort  
1894 | of pushover for industry. It is in contrast, I will tell  
1895 | you, with some of the other agencies that have weighed in.  
1896 | The National Park Service has taken a very strong line with  
1897 | respect to the particular plan I referenced. They provided  
1898 | comments that are encouraging the State of North Carolina  
1899 | consider coal gasification and asking for significant  
1900 | documentation on how emissions will be reduced.

1901 |         The National Park Service is doing that, but the  
1902 | Environmental Protection Agency is not doing that. It seems  
1903 | to me that is a total abdication of your role, and I know it  
1904 | is disappointing to many of us, and I think ought to be an  
1905 | embarrassment to the agency. I yield back my time.

1906 |         Chairman WAXMAN. Thank you, Mr. Sarbanes.

1907 |         Mr. Yarmuth, do you wish a second round? The gentleman  
1908 | is recognized.

1909 |         Mr. YARMUTH. Thank you, Mr. Chairman.

1910 |         I just have one question I would like to pursue  
1911 | regarding another statement that you made in your prepared  
1912 | statement. You said that EPA meets regularly with the  
1913 | Departments of Transportation, Energy and Agriculture to

1914 | ensure coordination of our work efforts. In addition, we  
1915 | have ensured major stakeholder group involvement in the  
1916 | process from the very beginning.

1917 | I want some clarification as to what the agency  
1918 | considers major stakeholders, how expansive is that list, and  
1919 | whether there is transparency on that issue. I ask it in the  
1920 | context not necessarily as a direct comment on anything EPA  
1921 | has done, but certainly with respect to what we know the Vice  
1922 | President did and--some of what we know the Vice President  
1923 | did with regard to development of energy policy back in the  
1924 | early years of the Bush Administration. So I would like you  
1925 | to discuss the issue of making sure that a comprehensive  
1926 | range of input is solicited and utilized by EPA.

1927 | Mr. JOHNSON. Yes, and that is very important. In fact,  
1928 | certainly one of your next panel members from NRDC was  
1929 | recently part of the, I think referred to as the green team  
1930 | in my office, as well as I invited industry, as well as I  
1931 | invited State and local government. I would be happy to  
1932 | provide those lists. We also make sure that we are open and  
1933 | transparent. I think that it is important for me as the  
1934 | decision maker to not only have an open and transparent  
1935 | process, but also make sure that there are opportunities for  
1936 | hearing from different perspectives. That is something that  
1937 | I have prided myself in in my 27 years and have continued  
1938 | that as Administrator.

1939 Mr. YARMUTH. Good.

1940 I have no other questions, Mr. Chairman.

1941 Chairman WAXMAN. Would the gentleman yield to me?

1942 Mr. YARMUTH. I would be happy to yield to my Chairman.

1943 Chairman WAXMAN. I thank the gentleman. Because I am  
1944 trying to think through this issue that I was questioning you  
1945 about. So you called Secretary Peters to ask if she knew  
1946 some people who wanted an extension of filing. Is that your  
1947 testimony? Filing comments on the California waiver?

1948 Mr. JOHNSON. As I said, Mr. Chairman, I have routine  
1949 conversations with her. And among the topics that we talked  
1950 about, to the best of my recollection, was that and was she  
1951 was aware of anyone who wanted--

1952 Chairman WAXMAN. And was she aware of anybody?

1953 Mr. JOHNSON. She was not, off the top of her head, and  
1954 she said that she was going to check with her staff.

1955 Chairman WAXMAN. And did you ever hear from her staff  
1956 about that?

1957 Mr. JOHNSON. I think my staff heard from her staff,  
1958 which indicated she was not aware of any. Again, I made the  
1959 decision the next day to not approve an extension of the  
1960 public comment period.

1961 Chairman WAXMAN. I see. So her staff informed you that  
1962 they knew of, informed your people that they knew of no one  
1963 who wanted an extension, they had already filed their

1964 | comments?

1965 |       Mr. JOHNSON. That hadn't already asked for an extension.

1966 |       Chairman WAXMAN. Oh, there were--

1967 |       Mr. JOHNSON. There were people that had asked for an  
1968 | extension, yes. But I was dis-inclined to approve it, in  
1969 | spite of the request.

1970 |       Chairman WAXMAN. Okay. Mr. Davis is here, and I want to  
1971 | see if he wants to pursue some questions.

1972 |       Mr. DAVIS OF VIRGINIA. I would be happy to.

1973 |       My understanding, the Chairman read from a letter that  
1974 | he wrote to Mr. Connaughton. I have the e-mail here from  
1975 | Sandy Snyder. Do you know her?

1976 |       Mr. JOHNSON. I don't.

1977 |       Mr. DAVIS OF VIRGINIA. To Tyler Duvall at OST and some  
1978 | others. But it basically says, subject, the call from the  
1979 | EPA Administrator Johnson, and it says: "Administrator  
1980 | Johnson just called and would like to speak with S1," who is  
1981 | Secretary Peters, "this morning regarding the climate change  
1982 | proposal they are working on with NHTSA. S1 is on travel and  
1983 | will not be available until 2:00 o'clock, and then we will  
1984 | work in a call with S1-EPA possibly 3:45."

1985 |       Pretty innocent, isn't it? I mean, I don't understand  
1986 | anything wrong out of that. Now, you are a career employee,  
1987 | aren't you?

1988 |       Mr. JOHNSON. I am career, I have had the pleasure and

1989 | opportunity and honor of serving as a political appointee now  
1990 | heading the agency.

1991 |         Mr. DAVIS OF VIRGINIA. You weren't active on the  
1992 | campaign or anything, were you?

1993 |         Mr. JOHNSON. I was not, no.

1994 |         Mr. DAVIS OF VIRGINIA. Under the Hatch Act and  
1995 | everything else, you would have been limited had you tried to  
1996 | be so?

1997 |         Mr. JOHNSON. That is correct.

1998 |         Mr. DAVIS OF VIRGINIA. And you have had a long and  
1999 | distinguished career in the civil service, I think at one  
2000 | point got, was it the President's Award? What was the  
2001 | highest award you got as a civilian employee?

2002 |         Mr. JOHNSON. Well, I have been honored to receive a  
2003 | number of awards. I have received Vice President Gore's  
2004 | hammer award for streamlining regulations.

2005 |         Mr. DAVIS OF VIRGINIA. Well, you get another hammer  
2006 | award here this morning just standing up to some of the  
2007 | examination.

2008 |         Mr. JOHNSON. I have also received the Presidential  
2009 | Distinguished Service Award.

2010 |         Mr. DAVIS OF VIRGINIA. From what I gleaned from here, my  
2011 | friends on the other side would like you to interpret a court  
2012 | ruling in a certain way without going through the usual legal  
2013 | and rulemaking changes, when we could change it very simply

2014 | here with a statute, couldn't we?

2015 |       Mr. JOHNSON. Yes, you could.

2016 |       Mr. DAVIS OF VIRGINIA. And my party is, for better or  
2017 | for worse, not in the majority, so we don't have control over  
2018 | the agenda on that. But if they wanted to change it, pass a  
2019 | law, send it up. If the President wants to veto it, then we  
2020 | can have this debate. I may end up supporting that law, if  
2021 | they were to put it forward.

2022 |       But to ask you to willy-nilly interpret this thing  
2023 | without going through the appropriate procedures seems to me  
2024 | to be a stretch. Do you have any comment on that?

2025 |       Mr. JOHNSON. I think it would be highly inappropriate,  
2026 | and I would be, I am sure, up here before oversight  
2027 | committees saying that I was not following the notice and  
2028 | comment rulemaking process and good public policy.

2029 |       Mr. DAVIS OF VIRGINIA. My reading of the Massachusetts  
2030 | v. EPA case is exactly that, that you need to go through an  
2031 | appropriate process before you can make that.

2032 |       Now, based on your experience, how long does a typical  
2033 | rulemaking take?

2034 |       Mr. JOHNSON. Typically, sir, it takes several years.

2035 |       Mr. DAVIS OF VIRGINIA. Now, is the time line that you  
2036 | announced today typical of EPA rulemakings?

2037 |       Mr. JOHNSON. It is atypical, it is a very, very  
2038 | aggressive rulemaking schedule.

2039 Mr. DAVIS OF VIRGINIA. So you are way ahead of schedule?

2040 Mr. JOHNSON. That is correct.

2041 Mr. DAVIS OF VIRGINIA. And yet passing a law, there is  
2042 no standard procedure for passing a law here, but in the  
2043 House majority rules and you can move things out. The Senate  
2044 is a completely different body altogether. But it would be  
2045 much faster, it seems to me, to pass a law than it would be  
2046 to have you go through a rulemaking.

2047 Mr. JOHNSON. Well, it can certainly be faster, but it  
2048 certainly provides certainty and certainly, if past is  
2049 prologue, also eliminates all the continuous litigation that  
2050 seems to go on with any regulation that we issue.

2051 Mr. DAVIS OF VIRGINIA. And unlike the Congressional  
2052 rulemaking procedure, law making procedure, under your  
2053 rulemaking, basically anybody can make a comment, can't they?

2054 Mr. JOHNSON. That is correct. In fact, we encourage  
2055 people to comment.

2056 Mr. DAVIS OF VIRGINIA. So you are open to everybody.

2057 And right now, you hope to have that response by the end  
2058 of 2008?

2059 Mr. JOHNSON. We intend to propose our regulation by the  
2060 end of this year, and the President has asked that we have a  
2061 final decision in place by the end of 2008 on mobile sources.

2062 Mr. DAVIS OF VIRGINIA. In your written testimony, you  
2063 mention that EPA is moving forward with a rule to guide

2064 | future efforts to sequester carbon dioxide.

2065 |         Mr. JOHNSON. Yes.

2066 |         Mr. DAVIS OF VIRGINIA. Could you tell us a little more  
2067 | about the state of the technology and how far we are from  
2068 | commercial viability, what are the infrastructure issues  
2069 | involved, like transporting and storing the carbon dioxide?

2070 |         Mr. JOHNSON. Currently, there are no commercial scale  
2071 | carbon sequestration, certainly cost-effective carbon  
2072 | sequestration storage, capture and storage that is available  
2073 | in the United States, or for that matter, around the world.  
2074 | As a Nation and other parts of the world, too, we are  
2075 | investing a lot of research dollars to help develop and  
2076 | perfect that.

2077 |         Having said that, we recognize, certainly at EPA  
2078 | recognize that that is going to be a significant opportunity,  
2079 | that is sequestration and storage. One of the issues that we  
2080 | need to make sure that we are protecting the public health  
2081 | and environment is that storage. Under our Clean Water and  
2082 | Safe Drinking Water Acts, we have the responsibility under  
2083 | the Underground Injection Control Program to make sure that  
2084 | anything injected into the Earth, such as carbon dioxide,  
2085 | such as greenhouse gases, is done in an environmentally and  
2086 | public health protective way.

2087 |         Mr. DAVIS OF VIRGINIA. Are we even sure how to do that?

2088 |         Mr. JOHNSON. We have experience of using CO<sub>2</sub>, in fact,

2089 | as a Nation have probably 30 years of experience of using it  
2090 | in oil recovery. What we don't have a lot of experience in  
2091 | is in the long-term storage. Of course, that is why we are  
2092 | writing regulation to make sure that as we approach the  
2093 | long-term storage, after it is sequestered, that we are able  
2094 | to do that in a way that is meeting our statute of being  
2095 | environmentally protective.

2096 |         Mr. DAVIS OF VIRGINIA. When do you believe that carbon  
2097 | sequestration will become a meaningful element of our efforts  
2098 | to mitigate carbon emissions?

2099 |         Mr. JOHNSON. It is difficult to predict. But some have  
2100 | suggested that we are still some decade or more so away from  
2101 | having commercial grade. Again, it is a very important area,  
2102 | and it is one that as a Nation we are investing in research  
2103 | to help identify these cost-effective, both sequestration as  
2104 | well as storage techniques.

2105 |         Mr. DAVIS OF VIRGINIA. Okay, thank you.

2106 |         Chairman WAXMAN. Thank you, Mr. Davis.

2107 |         Mr. Tierney, for your first round.

2108 |         Mr. TIERNEY. Thank you, Mr. Chairman.

2109 |         Administrator Johnson, you testified earlier in your  
2110 | remarks, as I understand it, in your written comments, that  
2111 | you have a legal responsibility to continue to process  
2112 | permits for coal-fired power plants. I think the implication  
2113 | of that is that you feel you have no choice but to approve

2114 | the permits without any consideration at all of their major  
2115 | contributions to climate change. The problem is, coming from  
2116 | Massachusetts, where we are involved in a regional effort up  
2117 | there, with the approval of one of these plants, or a couple  
2118 | of them, you can undo all the work that we have done through  
2119 | this regional effort.

2120 |         So since you raised the EPA's legal responsibility, I  
2121 | want to ask you some questions about that. Do you have a  
2122 | legal responsibility under the Clean Air Act to protect the  
2123 | public health and environment?

2124 |         Mr. JOHNSON. Yes, we do.

2125 |         Mr. TIERNEY. Now, the Supreme Court made it clear that  
2126 | if the EPA determines that greenhouse gases present a threat  
2127 | to the public's health or welfare the EPA is required to take  
2128 | action under the Clean Air Act. So do you have a legal  
2129 | responsibility to address global warming?

2130 |         Mr. JOHNSON. The Supreme Court didn't say required to.  
2131 | What the Supreme Court did was define CO2 and other  
2132 | greenhouse gases as pollutant. The issue of whether it  
2133 | should be subject to regulation is precisely what we have  
2134 | been talking about, and in fact, the Supreme Court clearly  
2135 | indicated that that analysis needs to be done by me before  
2136 | the next steps are taken.

2137 |         Mr. TIERNEY. All right, well, that was a point. Does  
2138 | the Clean Air Act provide any statutory deadline about which

2139 | time you have to act on permit applications?

2140 |       Mr. JOHNSON. There is no--I am not aware of any  
2141 | statutory deadline, no.

2142 |       Mr. TIERNEY. So you have the discretion under the Clean  
2143 | Air Act to defer action on those permits for as many months  
2144 | as you may want until EPA develops a plan for regulating  
2145 | carbon dioxide in power plants?

2146 |       Mr. JOHNSON. There is a balance, and that is why we need  
2147 | to look at these on a case by case basis. There is a balance  
2148 | of making sure that they, one, meet the requirements of today  
2149 | under the Clean Air Act; and second, as we develop a need,  
2150 | new energy sources as a Nation, because of energy security,  
2151 | because of economic growth, that balance of making sure that  
2152 | we are achieving our environmental protection  
2153 | responsibilities, at the same time making sure that we as a  
2154 | Nation have the kind of energy--

2155 |       Mr. TIERNEY. Well, you are responsible for environmental  
2156 | protection, not development.

2157 |       Mr. JOHNSON. My responsibility is environmental  
2158 | protection under the Clean Air Act.

2159 |       Mr. TIERNEY. And if you have the ability to delay those  
2160 | permits for a few months because you determine that you have  
2161 | a responsibility under the Clean Air Act to protect the  
2162 | public's health and welfare, you could do it?

2163 |       Mr. JOHNSON. My responsibility, again, is to protect

2164 public health and welfare under the Clean Air Act and what  
2165 the law is as of today. As I have previously commented to  
2166 your colleagues, we are very aggressively looking at it.  
2167 Again, the Supreme Court decision was very, very historic and  
2168 complex.

2169 Mr. TIERNEY. Let's get back--my question is, sir, my  
2170 question is, you have the ability to not act right now, if  
2171 you think this is harming the public's health or welfare, or  
2172 that there is a risk that that is the case, nothing in the  
2173 Clean Air Act requires that you act before you have those  
2174 regulations in place, before you put something in place to  
2175 deal with the climate change issue and global warming?

2176 Mr. JOHNSON. Again, we are currently evaluating that  
2177 particular issue as we speak.

2178 Mr. TIERNEY. That is right. And as long as you are  
2179 evaluating it, you have no obligation, the Clean Air Act does  
2180 not require that you act under any of these permits. It is  
2181 perfectly acceptable within the law for you to say, I am  
2182 going to wait until we get those regulations done, because  
2183 this is an issue of public health and welfare.

2184 Mr. JOHNSON. Again, as I have stated, we are going to be  
2185 evaluating each of the permits as we do on a case by case  
2186 basis, as they come before the agency.

2187 Mr. TIERNEY. What provision in the Clean Air Act  
2188 requires you to take action that sacrifices the public health

2189 | and welfare and the environment rather than use your  
2190 | discretionary authority to reduce greenhouse gas emissions?

2191 |         Mr. JOHNSON. Again, the decision and the issue before  
2192 | the agency, based upon the Supreme Court, is dealing with  
2193 | mobile sources. And we have said what our mobile source  
2194 | decision is. Under the Clean Air Act Title I, there are many  
2195 | sections of Title I, for example, Section 108, the National  
2196 | Ambient Air Quality Standards, Section 111, the New Source  
2197 | Performance Standard, as well as Section 112, the Hazardous  
2198 | Air Pollutant Section. The Clean Air Act is very complex.  
2199 | We are evaluating what is the best approach dealing for what  
2200 | the Supreme Court says--

2201 |         Mr. TIERNEY. You say that over and over again. But  
2202 | sitting from my perspective in Massachusetts, and part of  
2203 | that regional group that is working up there, the public is  
2204 | watching your action. You have already approved one plant,  
2205 | back in August 30th, to Deseret Power for the construction of  
2206 | a 110 megawatt coal-fired power unit in the Bonanza Power  
2207 | Plant in Uintah County, Utah. That is relatively small, but  
2208 | it is still going to emit up to 90 million tons of carbon  
2209 | dioxide over a 50 year lifetime.

2210 |         I guess the question is, the Clean Air Act does not  
2211 | require that you do things like that are sending us  
2212 | backwards. You have the authority to delay until you get your  
2213 | regulations in place, you have the obligation to protect the

2214 public's health. I hear you giving the same answer now four  
2215 times, I think, on that. But I will give you one last chance  
2216 to succinctly tell us why you don't just delay on these  
2217 permits until you get the regulations in place in order to  
2218 protect the public health and welfare?

2219 Mr. JOHNSON. Because, as I said, that I need to act  
2220 within the confines of the Clean Air Act and what the law is  
2221 as of today--

2222 Mr. TIERNEY. But sir, you already testified that you  
2223 have no obligation to approve those permits within any  
2224 particular time frame.

2225 Mr. JOHNSON. As I said, there is no time direction as  
2226 part of the Clean Air Act, but it is also my responsibility  
2227 to make sure that permits are processed in an appropriate  
2228 time. Three years--

2229 Mr. TIERNEY. Not if that affects adversely the public  
2230 health and welfare, you are making a balancing act here that  
2231 is not working in the public's interest.

2232 Mr. JOHNSON. Three years is not what most would say  
2233 would be an aggressive pace of evaluating a permit.

2234 Mr. TIERNEY. Well, I think what most would say was that  
2235 you are making a balancing act here where the public's health  
2236 and welfare comes out on the short end of your considerations  
2237 and that there is nothing within the statute that requires  
2238 you to act by any particular time frame and you are

2239 | sacrificing the public health and welfare by moving these  
2240 | permits before you get your regulations done.

2241 |         Mr. JOHNSON. Well--

2242 |         Mr. TIERNEY. I yield back, Mr. Chairman.

2243 |         Chairman WAXMAN. The gentleman's time has expired. Mr.  
2244 | Hodes, did you want a second round? The gentleman is  
2245 | recognized for five minutes.

2246 |         Mr. HODES. Thank you, Mr. Chairman.

2247 |         Mr. Johnson, you would agree that it is proper for this  
2248 | Committee to exercise its oversight on whether or not your  
2249 | agency is acting within the law and whether you are properly  
2250 | administering that agency, would you not?

2251 |         Mr. JOHNSON. I fully support the oversight  
2252 | responsibility, yes.

2253 |         Mr. HODES. And you agree that as an administrator, you  
2254 | have certain areas in which you exercise discretion?

2255 |         Mr. JOHNSON. Yes, under the law.

2256 |         Mr. HODES. And you would agree that consistency in your  
2257 | exercise of discretion is critical to proper administration  
2258 | of your agency, would you not?

2259 |         Mr. JOHNSON. That is always a question that I ask of  
2260 | consistency, just because something has been done a  
2261 | particular way for years or--that is a question I ask myself.

2262 |         Mr. HODES. You would agree that a double standard in the  
2263 | exercise of discretion would constitute arguably an abuse of

2264 | discretion, correct?

2265 |       Mr. JOHNSON. I am not sure where you are directing the  
2266 | comment.

2267 |       Mr. HODES. Let me direct you to a specific case in  
2268 | point. Fifteen months ago, the EPA proposed a permit for the  
2269 | Desert Rock Power Plant, which is an enormous proposed plant  
2270 | in Shiprock, New Mexico. The public comment for the permit  
2271 | ended on November 13th. That was before the Supreme Court  
2272 | ruled that EPA has the authority to regulate CO2 emissions.  
2273 | Now, recently, a number of citizens and environmental groups  
2274 | filed new comments on the proposed power plant, based on the  
2275 | Supreme Court decision and asked EPA to consider alternatives  
2276 | to the planned power plant.

2277 |       Are you going to consider those comments when you make  
2278 | your final decision on that permit?

2279 |       Mr. JOHNSON. Sir, the decision, the PSD permit decision  
2280 | was made by our Region 8. In granting the permit the status  
2281 | now is that the Sierra Club has appealed the Deseret PSD  
2282 | permit to our environmental appeals board. Our environmental  
2283 | appeals board is independent; they have the delegated  
2284 | authority to make the final decision. However, at their  
2285 | discretion, they can refer--

2286 |       Mr. HODES. Can I just stop you for a second? I am not  
2287 | talking about Deseret, I am talking about the Desert Rock  
2288 | Power Plant in Shiprock, New Mexico. And I understand, the

2289 | question I am asking you is, notwithstanding the end of the  
2290 | comment period on November 13th, given that new comments have  
2291 | bene filed following the Supreme Court decision, are you  
2292 | going to consider those comments when you make your final  
2293 | decision on the Desert Rock Power Plant?

2294 |         Mr. JOHNSON. I am sorry, I was getting it confused with  
2295 | the Deseret Bonanza. I am not familiar, personally familiar  
2296 | with the specifics of that, so I would like to get back to  
2297 | you for the record.

2298 |         Mr. HODES. So sitting here today, you have not made a  
2299 | decision whether or not you will or will not accept comments  
2300 | which may have been filed after the comment period?

2301 |         Mr. JOHNSON. As I said, I am not familiar with that  
2302 | specific case, so I would have to get back to you for the  
2303 | record.

2304 |         Mr. HODES. Do you agree that you have discretion to  
2305 | accept late-filed comments?

2306 |         Mr. JOHNSON. Again, I don't know the specifics of this  
2307 | permit.

2308 |         Mr. HODES. Sir, in general, do you agree that you have  
2309 | the discretion to accept late-filed comments?

2310 |         Mr. JOHNSON. It depends upon what the issue is at hand.  
2311 | For example, once a public comment period is closed and a  
2312 | formal rulemaking that, it is my understanding that we don't,  
2313 | because if we open it for one individual, then we have to

2314 | make that available for everyone. It is a notice and comment  
2315 | issue that we would have to address.

2316 |         Mr. HODES. Let me bring this to your attention. And  
2317 | this reflects in some sense on the conversation you were  
2318 | having earlier with Chairman Waxman about internal e-mails  
2319 | from the Department of Transportation about your pending  
2320 | decision on California's new motor vehicle standards. There,  
2321 | the Department of Transportation was trying to line up State  
2322 | governors and members of Congress to oppose the California  
2323 | request. Your general counsel stated that you would accept  
2324 | late comments opposing California.

2325 |         Here is what one internal e-mail says: ``EPA's General  
2326 | Counsel's Office says the Administrator is leaning toward not  
2327 | extending the comment period, but wants people to know that  
2328 | he has the discretion to accept late-filed comments.'' Now,  
2329 | sir, if you have the discretion to accept late-filed comments  
2330 | opposing greenhouse gas controls, you should have discretion  
2331 | to accept late-filed comments supporting the controls for  
2332 | Desert Rock. Will you assure this Committee that you will  
2333 | consider the late comments received on the Desert Rock  
2334 | application just like you assured the Department of  
2335 | Transportation that you would consider late comments opposing  
2336 | California's standards?

2337 |         Mr. JOHNSON. Again, for that I will have to get back to  
2338 | you for the record. I think it is important to note that

2339 | this was a petition process, not a regulation process. And  
2340 | that in fact, California itself submitted comments after the  
2341 | comment period.

2342 |         Mr. HODES. Will you commit to reopen the comment period  
2343 | on Desert Rock in light of the Supreme Court decision which  
2344 | you are now reviewing and which, from the various answers you  
2345 | have given to various questions, you apparently say has  
2346 | thrown your evaluation process into a state where you are not  
2347 | able to answer a lot of questions because you are still  
2348 | evaluating? So will you commit to reopening the comment  
2349 | period on this proposed power plant?

2350 |         Mr. JOHNSON. Since I am not familiar with that specific  
2351 | power plant, that is why I said I would get back to you for  
2352 | the record.

2353 |         Chairman WAXMAN. We will await a response for the  
2354 | record, unless someone just handed you a response.

2355 |         Mr. JOHNSON. And certainly, Mr. Chairman, I would be  
2356 | happy to have my staff talk to your staff as well.

2357 |         Chairman WAXMAN. Okay, but we do want the answers for  
2358 | the record.

2359 |         [Information to be provided follows:]

2360 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

2361 Chairman WAXMAN. Mr. Shays?

2362 Mr. SHAYS. Thank you.

2363 I am wrestling with a few emotions here. One of them is  
2364 that the Chairman has a record of 20 years of being more  
2365 right than wrong on issues dealing with the environment. The  
2366 public is catching up around the Country to his position. It  
2367 seems to me the Administration is slowing adjusting its  
2368 emphasis about a number of issues, particularly related to  
2369 global warming.

2370 I am struck by Mr. Hodes, who I think was an attorney  
2371 for the State of New Hampshire, and knows that there are  
2372 rules and regulations that you have to follow. I have  
2373 listened to some of the questions when I have been here that,  
2374 while they are not badgering you, are basically, it seems to  
2375 me, asking you to circumvent the process that Congress  
2376 establishes and you by law have to follow. You are going to  
2377 get sued by the industry or you are going to get sued by the  
2378 environmental community, but you are going to get sued by one  
2379 or the other or both because you didn't follow the process  
2380 the way it has to be followed. So I have some empathy for  
2381 you in this circumstance.

2382 What I am interested in knowing is, is it illegal for  
2383 the Department of Transportation to have an opinion about a  
2384 waiver and is it illegal for the Department to encourage  
2385 people who may have an opinion about it, whether they are

2386 | members of Congress or governors, to weigh in? It would  
2387 | strike me that it may be illegal for you to do that, since  
2388 | you are going to be having to make a decision on this. But  
2389 | is it illegal for another department of Government to do  
2390 | that?

2391 |         Mr. JOHNSON. Sir, I wouldn't want to comment on the  
2392 | legality of what one can or can't do.

2393 |         Mr. SHAYS. Tell me why, because you don't know the  
2394 | answer?

2395 |         Mr. JOHNSON. Because I don't know the answer. Again,  
2396 | what I think is good, I think that it is important that our  
2397 | Government officials talk to one another. As I said, on all  
2398 | of our issues at EPA, there are many, many opinions. Again,  
2399 | my responsibility as the Administrator and the decision-maker  
2400 | under multiple statutes is to make that final decision,  
2401 | independent, based upon the record. And that is what I will  
2402 | do.

2403 |         Mr. SHAYS. Then let me ask you this. Would it be  
2404 | inappropriate or illegal, and tell me which it might be, for  
2405 | anyone within EPA to tell members of Congress or governors to  
2406 | weigh in on this, not to weigh in but to take a particular  
2407 | position on it? To weigh in, it would strike me as being  
2408 | very appropriate to suggest to a member of Congress or--and I  
2409 | am not saying this is happening--or to the Governor, to a  
2410 | governor to weigh in on a particular side. Would you agree

2411 | that that would be inappropriate for someone within your own  
2412 | department to do that?

2413 |         Mr. JOHNSON. Again, all of my staff needs to follow what  
2414 | the rules are, and certainly those that are anti-lobbying.  
2415 | Certainly as the head of the agency I feel free to be able to  
2416 | talk to you members of Congress--

2417 |         Mr. SHAYS. I am really not talking about anti-lobbying.  
2418 | I am really talking about the appropriateness of the agency,  
2419 | your agency, because you are an agency, not a department,  
2420 | correct?

2421 |         Mr. JOHNSON. That is correct.

2422 |         Mr. SHAYS. Your agency, while you couldn't comment on  
2423 | whether it would be appropriate for the Department of  
2424 | Transportation to be lobbying or arguing or encouraging  
2425 | people to contact EPA, would it be inappropriate, one, I will  
2426 | give you the answer and then you tell me if you agree. I  
2427 | don't think it is inappropriate for EPA to encourage anyone  
2428 | to comment on the decision-making process as you allow anyone  
2429 | to comment. But it would be inappropriate for people at EPA  
2430 | to suggest what someone should say to EPA.

2431 |         Mr. JOHNSON. I agree with that.

2432 |         Mr. SHAYS. Okay. Thank you. I yield back.

2433 |         Chairman WAXMAN. Thank you, Mr. Shays.

2434 |         Ms. Watson, did you want a second round? You don't have  
2435 | to. We have another panel, but you are entitled.

2436 Ms. WATSON. Just very quickly, thank you, Mr. Chairman.  
2437 I want to hear from the other panel. But I have just called  
2438 up from California to get the bill, my staff is bringing it  
2439 in to me. What I am gathering from the conversation that we  
2440 had prior is that there was a bias against California's  
2441 request for a waiver. Would you say that that were true?

2442 Mr. JOHNSON. There are many opinions. I am aware of the  
2443 many diverse opinions. My responsibility as Administrator  
2444 and under the Clean Air Act is to make an independent  
2445 decision based upon the record, based upon what the statutory  
2446 requirements are. I will do that, and I have committed to  
2447 the Governor to do that by the end of the year.

2448 Ms. WATSON. All right. I did hear you say that you make  
2449 your decisions based case by case. California discussed and  
2450 debated how we could continue to improve our air quality. The  
2451 bill went through both Houses, went to our Governor, it was  
2452 signed. We are implementing it. It looks like--or we are  
2453 trying to--that it is a model for other States. And other  
2454 States have been inquiring to California to see if this is  
2455 something they could customize to their air quality bills.

2456 I am really highly concerned that there is a built-in  
2457 bias against California, against what we are trying to do.  
2458 That is the reason why we are filing, as we speak, a suit  
2459 against EPA, because we are gathering more and more evidence  
2460 that there was conversation about denying the waiver. I am

2461 highly concerned that you sit here in Washington, D.C. and  
2462 you would disregard the will of our 120 person legislature  
2463 and our Governor, and try to rule, and make a decision  
2464 against our waiver.

2465 With that, thank you, Mr. Chairman. I look forward to  
2466 hearing from the other panel.

2467 Mr. JOHNSON. Mr. Chairman, may I add a comment?

2468 The statute under the Clean Air Act, Section 209, is  
2469 very specific as to the criteria on which I need to base--

2470 Ms. WATSON. I am well aware, that is why I am giving you  
2471 the bill and the provisions. And we debated this in  
2472 California, and what I heard from you is that there is a bias  
2473 against California's own decision--

2474 Mr. JOHNSON. That is not correct.

2475 Ms. WATSON. And that people have been talking about  
2476 denying the waiver.

2477 Mr. JOHNSON. Again, there are many, many opinions--

2478 Ms. WATSON. We will go to court and adjudicate this.

2479 Thank you very much, Mr. Chairman.

2480 Mr. JOHNSON. Again, my responsibility is to make sure  
2481 that I evaluate what the record is--

2482 Ms. WATSON. We will settle it in court, thank you.

2483 Mr. JOHNSON.--under Section 209 and I intend to do that.

2484 Chairman WAXMAN. Thank you, Ms. Watson.

2485 Mr. Sarbanes, do you wish to ask further questions?

2486 Mr. SARBANES. Very quickly. I am just curious where you  
2487 believe that you are on the spectrum of urgency with respect  
2488 to the issue of climate change and global warming and  
2489 greenhouse gas emissions. I mean, you are trying to present  
2490 the notion, I think, today, that you are sort of hemmed in  
2491 from being able to be as aggressive as maybe you would like  
2492 to be with respect to those issues.

2493 But do you think you fall on the urgent end of the  
2494 spectrum in terms of the steps that we need to start taking  
2495 with respect to global warming? Where you would put yourself  
2496 on that?

2497 Mr. JOHNSON. Well, I put myself that this is a serious  
2498 concern for the Nation. And I put myself in being in an  
2499 urgency, yet at the same time, we need to be deliberative.  
2500 That is the balance. As I said, we for the first time in our  
2501 Nation's history are going to be regulating greenhouse gases,  
2502 proposing to regulate greenhouse gases from mobile sources.  
2503 That includes fuel--

2504 Mr. SARBANES. Well, that is the first time in U.S.  
2505 history.

2506 Mr. JOHNSON. We are for the first time in U.S. history  
2507 going to be proposing regulations to regulate greenhouse gas,  
2508 carbon dioxide in particular, storage, as part of our  
2509 underground injection control program. That is the first  
2510 time in our Nation's history.

2511 Mr. SARBANES. And hallelujah, that you got to the party,  
2512 you are here. You can now regulate these things.

2513 Mr. JOHNSON. So we are working our way through. This is  
2514 a serious problem, but we are working our way through it, a  
2515 very deliberate process, to make sure that we are, again,  
2516 understanding what the implications are of the Supreme Court  
2517 decision. This is very, very complex. The Clean Air Act is  
2518 very, very complex.

2519 We need to make sure, and I need to make sure that I am  
2520 being aggressive, yet I am being responsible in my  
2521 decision-making.

2522 Mr. SARBANES. I would just interrupt, before I run out  
2523 of time, but it would seem to me that if you are bringing a  
2524 personal and professional urgency to this issue that I think  
2525 so many others are bringing that you would regard having now  
2526 arrived with the regulatory authority to be able to move on  
2527 this issue as a huge opportunity to catch up for lost time,  
2528 rather than to engage in this sort of, this babble about  
2529 deliberation, which in the meantime is allowing the industry  
2530 to move forward in ways that are going to cost us  
2531 significantly over the long term.

2532 You talk about a feeling of urgency, but every action  
2533 that you have taken with respect to the waiver request,  
2534 fighting against the regulation of these emissions as the  
2535 case was coming on its way to the Supreme Court, approving

2536 | these permits when we have already, I think, established  
2537 | clearly that you are not required by law to do it, all of  
2538 | these things belie the notion, in fact, you are bringing that  
2539 | kind of urgency.

2540 | I would just suggest that you are way, way out of step  
2541 | with where most of the science and the experts are with  
2542 | respect to this issue. I hope that you get in step and that  
2543 | the agency gets in step as quickly as you can.

2544 | Thank you, Mr. Chairman.

2545 | Mr. JOHNSON. Sir, I respectfully disagree. Once the  
2546 | Supreme Court made the decision that it is a pollutant, then  
2547 | set about an aggressive path to address the California  
2548 | petition, set about an aggressive path to regulate greenhouse  
2549 | gas emissions, to propose them for mobile sources, set about  
2550 | the path of proposing a regulation for dealing with  
2551 | underground injection, in the meantime continuing to promote  
2552 | all the other programs, in the meantime sorting through what  
2553 | all this means and what it should mean with regard to  
2554 | stationary sources.

2555 | Chairman WAXMAN. Will the gentleman yield?

2556 | Mr. JOHNSON. This is a very aggressive path.

2557 | Mr. SARBANES. You have set about an aggressive path to  
2558 | push these permits out the door, when there is no requirement  
2559 | that you do that. That in and of itself it seems to me  
2560 | competes against the idea that you are being aggressive on

2561 | all these other fronts.

2562 | Thank you, Mr. Chairman.

2563 | Chairman WAXMAN. The gentleman's time has expired.

2564 | Your aggressive path, what does that mean in terms of  
2565 | your decision on the California waiver? Is that going to be  
2566 | aggressively decided soon?

2567 | Mr. JOHNSON. By the end of the year was my commitment to  
2568 | the Governor.

2569 | Chairman WAXMAN. Mr. Tierney?

2570 | Mr. TIERNEY. Thank you, Mr. Chairman.

2571 | Administrator Johnson, let's turn to the question of  
2572 | whether you are legally required to regulate carbon dioxide  
2573 | when you approve new power plants. Let's get back to that.  
2574 | If you look at your decision on the Deseret Plant, and your  
2575 | reasoning appears to be one of a bootstrap sort of argument,  
2576 | your position seems to be that you are required to regulate  
2577 | on pollutants that the EPA has already regulated on in some  
2578 | other context. And since the EPA has never previously  
2579 | regulated CO2, you take the position that you are not  
2580 | required to regulate it now. Is that pretty much it?

2581 | Mr. JOHNSON. What the law says, and certainly it is not  
2582 | a regulated pollutant under the law at this time--

2583 | Mr. TIERNEY. Because it is not a regulated pollutant,  
2584 | you don't have to regulate it now until you get the  
2585 | regulation?

2586 Mr. JOHNSON.--but the very issue that you are talking  
2587 about is, we are in a very deliberative process to try and  
2588 sort through what this means.

2589 Mr. TIERNEY. In April, you submitted what appears to be  
2590 a very non-controversial rule to the White House for  
2591 pre-publication review. That is the rule that would allow  
2592 auto makers to use CO2 as an alternative to chemicals that  
2593 harm the ozone layer in motor vehicle air conditioners. The  
2594 rule imposes some restrictions on how auto makers can use  
2595 carbon dioxide, because apparently if they leak into the  
2596 passenger compartment at a high enough level, it will hurt or  
2597 kill people.

2598 As far as it appears here, no one opposes that rule.  
2599 But it has sat around at OMB and the White House now for six  
2600 months, which is about twice as long as the usual 90 day  
2601 deadline period for usual OMB review. Can you tell us why it  
2602 is still being stalled over there at the White House?

2603 Mr. JOHNSON. I know that it is not a final rule and that  
2604 it is currently being reviewed as part of an inter-agency  
2605 process.

2606 Mr. TIERNEY. Pre-publication review, usually that is a  
2607 90 day process. It has been six months, twice that long.  
2608 Can you tell me why they are stalling on it?

2609 Mr. JOHNSON. Again, I know that it is in the  
2610 inter-agency process. Beyond that, I would be happy to get

2611 | back to you for the record.

2612 |         Mr. TIERNEY. It is a non-controversial rule, apparently.  
2613 |         But the fact of the matter is, let's see what it is here, if  
2614 | it were issued, sort of undercuts your position that you had  
2615 | an unregulated carbon dioxide here, it would be regulated  
2616 | carbon dioxide, then you would have to do something about the  
2617 | power plants, you would have to consider regulating in the  
2618 | power plants.

2619 |         So that seems to be the point here, and that is why I  
2620 | think we are drawing attention to it right here. You are  
2621 | just in a situation, you are like the person that ties  
2622 | themselves onto the train tracks and then complains the train  
2623 | is coming. You say you can't, but it appears more and more  
2624 | like this Administration just won't. If you did that  
2625 | regulation, if you didn't put it around over there for twice  
2626 | as long, six months instead of 90 days and you actually did  
2627 | something on that, you would then be in a position where you  
2628 | had to do something on the power plants.

2629 |         Mr. JOHNSON. Well, as I have said, and let me just  
2630 | repeat one more time, we really are working very diligently  
2631 | in developing an overall approach--

2632 |         Mr. TIERNEY. You know something, Mr. Administrator  
2633 | Johnson? No, you are not. All right? If you were working  
2634 | diligently, you wouldn't be allowing this thing to be stalled  
2635 | over at the White House for six months and undercutting your

2636 | argument that I really can't do anything. That  
2637 | non-controversial, fairly simple regulation of CO2 would be  
2638 | done and then you would have a reason why you had to do  
2639 | something on the power plants. But you are busy on your  
2640 | review, which you have answered four or five times now, and  
2641 | apparently you are busy not getting this out of the White  
2642 | House OMB office, anywhere near close to the usual time it  
2643 | takes. I think the message that sends to the American  
2644 | public, certainly sends to me, and I suspect my colleagues,  
2645 | is you are not looking for any avenue to do it, you are  
2646 | looking for every avenue you can to not do it.

2647 | I yield back.

2648 | Chairman WAXMAN. Do you wish to respond?

2649 | Mr. JOHNSON. As I said, I would be happy to get back to  
2650 | him on the record. I think that again illustrates the  
2651 | complexity that we are dealing with. We have the Supreme  
2652 | Court decision, we are proposing regulations to regulate  
2653 | greenhouse gases for the first time from mobile sources. We  
2654 | have the California petition, which is a separate section of  
2655 | the Clean Air Act, noting. We have the question of the  
2656 | impact on other stationary sources. We have permits that are  
2657 | pending before the agency. We have lawsuits, petitions  
2658 | before the agency. So there are many, many activities all  
2659 | addressing the issue of greenhouse gases. We are working  
2660 | very deliberately to work through all of these issues, but in

2661 a responsible way.

2662 Chairman WAXMAN. Administrator Johnson, we appreciate  
2663 your being here, but let me just comment. I fear you may be  
2664 encouraging the energy industry to quickly build dirty energy  
2665 infrastructure instead of sending a signal that it is time to  
2666 take climate change seriously and deploy advanced technology.  
2667 So I am going to introduce legislation, based on what I have  
2668 learned today, it is important that we prevent EPA from  
2669 continuing to issue permits for uncontrolled power plants.

2670 We also need to let every investor know that if they  
2671 build a dirty power plant today, they should not expect to be  
2672 grandfathered into a future climate change program.  
2673 Investors need to understand that projects that do not  
2674 account for climate concerns will be at risk of being a  
2675 stranded investment. We should alert ratepayers to the large  
2676 future costs and rate increases they may face if their local  
2677 utility builds uncontrolled plants today.

2678 Further, Administrator Johnson, I also will follow up on  
2679 the issue of your communications with the Department of  
2680 Transportation. I am going to send you a request for all  
2681 documents relating to communications with the Transportation  
2682 Department and/or the White House about the California  
2683 waiver, and I expect you to cooperate with this request and  
2684 provide the documents without delay.

2685 I thank you very much for your being here today. I

2686 | thank you for your participation in this hearing. We will  
2687 | look forward to getting the information from you.

2688 | [Information to be provided follows:]

2689 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

2690 Chairman WAXMAN. We are now being called to the House  
2691 Floor for a series of a couple of votes. That should take no  
2692 more than a half hour and maybe less. I would like to  
2693 request that all members come back here immediately after the  
2694 second vote, and we will hear from the second panel that is  
2695 scheduled to testify. We stand in recess.

2696 [Recess.]

2697 Chairman WAXMAN. The Committee will come to order. We  
2698 would like our next group of witnesses to please take their  
2699 positions. I want to thank all of you for being here and for  
2700 your patience. I know that many of you traveled some  
2701 distance to discuss these critical issues of greenhouse gas  
2702 emissions from coal-fired power plants.

2703 We have with us Ron Curry. Mr. Curry has served as  
2704 Secretary of the New Mexico Environment Department since  
2705 January 2003. He previously served as the New Mexico  
2706 Environment Department's first Deputy Secretary, and from  
2707 1997 to 1998 as Santa Fe city manager.

2708 David Doniger is the Policy Director of the Natural  
2709 Resources Defense Council's Climate Center. He has  
2710 previously served as Director of Climate Change Policy at the  
2711 Environmental Protection Agency and is counsel to the head of  
2712 the EPA's Clean Air Program.

2713 Dr. Daniel M. Kammen is the founding Director of the  
2714 Renewable and Appropriate Energy Laboratory at the University

2715 of California Berkeley where he also serves as a professor in  
2716 the Energy and Resources Group at the Goldman School of  
2717 Public Policy and the Department of Nuclear Engineering. Dr.  
2718 Kammen received his Ph.D. in physics from Harvard University.

2719 John R. Cline, Mr. Cline is a partner with Troutman  
2720 Sanders, and is a member of the firm's environmental and  
2721 natural resources practice group. Before joining the firm,  
2722 he worked as a manager of environmental affairs for the  
2723 Potomac Electric Power Company.

2724 I am delighted that you are all here. It is the practice  
2725 of this Committee that all witnesses testify under oath. So  
2726 if you would please rise, we will administer the oath to you.

2727 [Witnesses sworn.]

2728 Chairman WAXMAN. Let the record indicate that all the  
2729 witnesses answered in the affirmative.

2730 Your prepared statements will be in the record in full.  
2731 What we would like to ask you to do is to limit the oral  
2732 presentation to five minutes. We have a clock, the light is  
2733 green at the moment, but I am going to set it. When there is  
2734 one minute left, it will turn yellow, and then after that, it  
2735 will turn red.

2736 Mr. Curry, we will start with you. We are looking  
2737 forward to your testimony.

2738 | STATEMENTS OF RON CURRY, SECRETARY, NEW MEXICO ENVIRONMENT  
2739 | DEPARTMENT; DAVID DONIGER, POLICY DIRECTOR, CLIMATE CENTER,  
2740 | NATURAL RESOURCES DEFENSE COUNCIL; DANIEL M. KAMMEN,  
2741 | DIRECTOR, RENEWABLE AND APPROPRIATE ENERGY LABORATORY,  
2742 | UNIVERSITY OF CALIFORNIA BERKELEY; JOHN CLINE, PARTNER,  
2743 | TROUTMAN SANDERS LLP

2744 | STATEMENT OF RON CURRY

2745 |         Mr. CURRY. Thank you, Chairman Waxman and Representative  
2746 | Davis and members of the Committee, for inviting me to  
2747 | testify here today. My name is Ron Curry, and I am Cabinet  
2748 | Secretary for the New Mexico Environment Department under the  
2749 | administration of Governor Bill Richardson.

2750 |         Global climate change is an extremely important issue to  
2751 | New Mexico. Ne Mexico's precious limited water supply will  
2752 | be threatened if temperatures increase and drought conditions  
2753 | continue. In the desert southwest, we simply have no water  
2754 | to waste, and cannot wait to address climate change.

2755 |         Under the leadership of the Governor, we have  
2756 | established some of the toughest State greenhouse gas  
2757 | emissions reduction targets in the Nation: 2000 levels by the  
2758 | year 2012; 10 percent below 2000 levels by 2020; and 75  
2759 | percent below 2000 levels by 2050. Governor Richardson also

2760 established the New Mexico Climate Change Advisory Group,  
2761 which developed 69 greenhouse gas emission reduction  
2762 strategies. Out of those 69, 67 of them were passed  
2763 unanimously.

2764 Many of the advisory group's recommendations focus on  
2765 New Mexico's energy economy. New Mexico is a fossil energy  
2766 State. We are third in the Nation, third in the Nation for  
2767 on-shore gas production and fifth in oil production. We  
2768 export about half the electrical power generated in the  
2769 State, which is mostly from coal-fired plants.

2770 Since two-thirds of the State's greenhouse gas emissions  
2771 come from coal and our oil and gas industry, to effectively  
2772 address climate change we must change and diversify our  
2773 energy economy. This is particularly important in New Mexico  
2774 because the majority of our State revenues come from the oil  
2775 and gas industry.

2776 Nationally, emissions for electricity production account  
2777 for about 40 percent of all greenhouse emissions. The  
2778 decisions you make here today and in the future will focus on  
2779 atmospheric concentrations for decades, because those plants  
2780 will operate for about a half a century and carbon dioxide  
2781 emissions remain in the air for at least a century.

2782 When you consider the long-term effects of those plants,  
2783 you must think about the legacy of future generations. I am  
2784 a fortunate grandfather, having Julia and Aiden as my

2785 grandchildren. I look to them as a reason to prevent global  
2786 warming in the future.

2787 New Mexico became the first State in the Nation in 2002  
2788 and 2003 to require an applicant for a coal-fired power plant  
2789 to consider integrated gasification combined cycle, IGCC,  
2790 technology when determining the best available control  
2791 technology. That is significant, because many believe that  
2792 not only does this technology result in fewer criteria  
2793 pollutant emissions and more water consumption than most  
2794 conventional power plant technologies, but IGCC is also the  
2795 most economical way to capture carbon from coal in the power  
2796 production process.

2797 The EPA stated in a December 2005 letter that IGCC need  
2798 not be part of the BACT analysis for the conventional  
2799 pulverized coal-fired unit, because it would redefine the  
2800 source. New Mexico could not agree more strongly.

2801 Congress's record is clear in that it intended to  
2802 require the reconsideration of innovative fuel combustion  
2803 techniques like IGCC and BACT analysis. The Clean Air Act  
2804 requires the assessment of collateral impacts, such as the  
2805 effects of unregulated pollutants in the BACT analysis.

2806 The recent Supreme Court decision that carbon dioxide is  
2807 a pollutant should provide EPA with the impetus to address  
2808 carbon dioxide emissions from stationary and mobile sources.  
2809 We have not seen evidence of that yet. In New Mexico, we

2810 | have established greenhouse gases as a pollutant, and  
2811 | therefore we have the authority to regulate those emissions  
2812 | in the State. In New Mexico, we have exercised that  
2813 | authority, just last month by adopting the Nation's most  
2814 | comprehensive greenhouse gas emissions reporting rules.  
2815 | Those rules require mandatory reporting of greenhouse gas  
2816 | emissions from certain industrial sectors reporting in the  
2817 | year 2008.

2818 |         Governor Richardson understands that we cannot stop  
2819 | global warming by ourselves in New Mexico. We are only the  
2820 | cause of about 1.2 percent of the national total. But we can  
2821 | do our part by leading by example. I ask this group, this  
2822 | Congress, to help us do exactly that. Attaching a cost to  
2823 | carbon emissions from new plants will send the right message  
2824 | to industry and encourage the use of carbon emissions  
2825 | controls in the near-term.

2826 |         Mr. Chairman, thank you for letting us testify here  
2827 | today. On behalf of Governor Richardson, we continue to  
2828 | promote this effort, as he says, by leading by a very strong  
2829 | example.

2830 |         [Prepared statement of Mr. Curry follows:]

2831 | \*\*\*\*\* INSERT \*\*\*\*\*

2832 | Chairman WAXMAN. Thank you very much, Mr. Curry.

2833 | Mr. Doniger?

2834 STATEMENT OF DAVID DONIGER

2835 Mr. DONIGER. Thank you, Mr. Chairman and Mr. Issa.

2836 I am David Doniger, I am Policy Director for the Climate  
2837 Center of the NRDC. NRDC is a national non-profit  
2838 organization of scientists and lawyers and environmental  
2839 specialists. We have been around since 1970. We have 1.2  
2840 million members and supporters.

2841 I would like to begin by an observation about the  
2842 Supreme Court case, Massachusetts. There are actually two  
2843 cases, Massachusetts v. EPA, decided by the Supreme Court,  
2844 which concerns mobile sources directly. There was another  
2845 case, New York v. EPA, which concerned the same decision by  
2846 EPA not to regulate power plant CO2 for the same reasons  
2847 given by the agency in deciding not to do that for motor  
2848 vehicles. So when the Supreme Court overruled EPA on motor  
2849 vehicles, the D.C. Circuit sent both cases back to the EPA  
2850 for new decisions on both motor vehicles and on power plants,  
2851 pursuant to the Supreme Court rationale.

2852 We have a schedule from EPA for dealing with motor  
2853 vehicles. We don't have any schedule from EPA for dealing  
2854 with power plants. So that is the first observation.

2855 The second point is there seems to be one point of  
2856 agreement, we think, between EPA and NRDC when it comes to

2857 CO2 and Clean Air Act permitting. That is the once EPA  
2858 issues regulations to establish controls for CO2 emissions  
2859 for vehicles, or maybe for power plants also, at that point  
2860 it becomes an obligation to evaluate CO2 in the PSD  
2861 permitting process. EPA concedes that. But that is a couple  
2862 of years off.

2863         So what we are concerned about here is what happens in  
2864 the meantime with respect to maybe a couple of dozen power  
2865 plants that are in the permitting process now. It is clear  
2866 that if they came up a year and a half, two years from now,  
2867 there would have to be an analysis of Best Available Control  
2868 Technology for CO2. There is, we believe, the requirement to  
2869 do that now. And certainly the authority to do that now.

2870         Why is it required? Because CO2 is already regulated  
2871 under Section (a)(21) of the Clean Air Act, which establishes  
2872 monitoring regulations and reporting regulations for the CO2  
2873 emissions from existing power plants. And those are  
2874 requirements under the Acid Rain title. They are part of the  
2875 program for, the monitoring requirements are part of the  
2876 program for curbing sulfur and NOX. But they are regulations  
2877 written under the Clean Air Act and adopted into the Clean  
2878 Air Act. So we think at this point, it is already the case  
2879 that CO2 is regulated under the Clean Air Act. And  
2880 certainly, it is subject to regulation under the Clean Air  
2881 Act.

2882           The Act doesn't say that the PSD permitting, the BACT  
2883 analysis is required only for regulated pollutants. It uses  
2884 a broader phrase. It is required for pollutants that are  
2885 subject to regulation. We think that this is a requirement  
2886 now to be doing BACT analysis for CO2 for the power plants  
2887 that are in the pipeline now and not let them slip under the  
2888 wire while waiting for a future decision about motor vehicles  
2889 coming maybe at the end of next year.

2890           The consequences of letting these power plants go  
2891 through is that you end up with new plants that have a 60  
2892 year lifetime and as the Chairman has noted, up to a billion  
2893 tons of lifetime emissions. And they are let in under the  
2894 wire for the last 58 or 59 years of their life, they would be  
2895 subject to no CO2 controls that could have been imposed at  
2896 the beginning and maybe it would have altered the decision  
2897 about what kind of a plant to build.

2898           So there are other authorities in the PSD program, the  
2899 requirement to consider alternative technologies and to  
2900 consider the collateral impacts, environmental impacts of the  
2901 decisions. All of these would provide EPA the authority to  
2902 hold these plants up or to require that they now go through a  
2903 BACT analysis and an alternatives analysis for CO2-related  
2904 technology.

2905           My organization believes that we should not be building  
2906 any more coal plants of the conventional design without

2907 carbon capture and storage. Preferably, we should be relying  
2908 on efficiency and renewables. But we recognize that coal is  
2909 a major part of the energy picture for a long time, will be.  
2910 And that any new coal plants that are built should be built  
2911 right now, starting now, with carbon capture and disposal.  
2912 And that might lead companies to choose, as Mr. Curry said,  
2913 to go with coal gasification technology, as it is more  
2914 amenable to the capture and disposal.

2915 By the way, we support the EPA in the recent decision to  
2916 set up rules to provide the ground rules for carbon capture  
2917 and disposal under the underground injection program. That  
2918 is something we asked for some time ago, and we are glad that  
2919 they have agreed to go down that track. We will watch  
2920 closely what the requirements are. But we agree that there  
2921 is a need for rules to tell everybody, the prospective  
2922 builders of these plants, exactly what is required by way of  
2923 carbon capture and disposal and that that will facilitate the  
2924 quick movement into that technology.

2925 If we don't do this, we will have, as I said, this  
2926 legacy of new plants, maybe a dozen new plants, slipped in  
2927 under the wire that don't have the right technology, don't  
2928 have the right controls. And it will raise the cost of the  
2929 CO2 control program once Congress enacts it, more generally,  
2930 because you have plants with old technology that are harder  
2931 to control, and that will reflect itself in higher costs in

2932 | the companies and perhaps higher costs on the ratepayers.  
2933 | This is why so many power company executives now join us in  
2934 | supporting the call for new legislation, because they realize  
2935 | that the choice of what technology to invest in now is on the  
2936 | line here. Smart decisions under a carbon regime will be  
2937 | different than the decisions they would make without a carbon  
2938 | regime. They want the certainty, they want to know. EPA has  
2939 | the certainty right now to clear that up for them by  
2940 | requiring that CO2 be accounted for in the permitting of new  
2941 | power plants.

2942 |         So a responsible policy would include two specific steps  
2943 | for large new power plants starting now. First, EPA should  
2944 | immediately require that any future PSD permits be issued  
2945 | only after a BACT analysis and a determination of what is  
2946 | BACT. Second, even if EPA didn't do that, they should reach  
2947 | basically the same policy outcome under their authority to  
2948 | consider alternatives and collateral environmental impacts  
2949 | under Section 165(a)(2).

2950 |         I would be happy to answer your questions. Thanks.

2951 |         [Prepared statement of Mr. Doniger follows:]

2952 | \*\*\*\*\* INSERT \*\*\*\*\*

2953

Chairman WAXMAN. Thank you very much, Mr. Doniger.

2954

Dr. Kammen?

2955 | STATEMENT OF DANIEL M. KAMMEN

2956 |           Mr. KAMMEN. Thank you, Mr. Chairman. I do have some  
2957 | slides, if we could bring those up.

2958 |           Thank you for the chance to be here, Mr. Chairman and  
2959 | Mr. Issa. I appreciate your taking on such an important  
2960 | topic today. Global warming is a challenge that we all must  
2961 | face. The greenhouse gas emissions that we are putting into  
2962 | the atmosphere today are in fact part of our future legacy.  
2963 | The current round of climate change that we are already  
2964 | seeing as a result of emissions that we have already made and  
2965 | in fact, the emissions we are now making today and will make  
2966 | in the future, are part of the legacy that we leave to future  
2967 | generations.

2968 |           Global warming has also been called the mother of all  
2969 | externalities. For that reason, I concur with Mr. Curry in  
2970 | calling for discussions and action on a price for carbon as  
2971 | soon as possible. That will facilitate more of these actions  
2972 | than any other single measure, because it will bring a price  
2973 | to the pollution we don't want, and we can use that as well  
2974 | to reward behaviors we don't want, such as income generation  
2975 | and paying for workers in factories and plants.

2976 |           As a scientist who was involved in the IPCC process, and  
2977 | as the Director of the Renewable Energy Laboratory, I will

2978 focus my comments today on the technologies that are  
2979 available for us to deal with this problem. And in fact,  
2980 this is one of the areas where we have significant good news.  
2981 Instead of licensing new sources of emissions that will be  
2982 with us for decades, the good news is that we have a range of  
2983 technologies available today that can make a significant  
2984 impact.

2985 In the next slide, I highlight just one of those, which  
2986 are compact fluorescent light bulbs that make an immediate  
2987 impact. They reduce the need for power, the emissions and  
2988 they save ratepayers on their bills effective immediately.  
2989 In fact, there is a challenge in California for families that  
2990 install four to five bulbs, compact fluorescents, if they do  
2991 not see an immediate savings, to call into our California  
2992 Energy Commission to discuss that. Because you will see an  
2993 immediate rate savings. So Californians and people across  
2994 the Country who invest in these will see an immediate  
2995 decrease in their bills, which benefits people across the  
2996 entire economic spectrum. In fact, our utilities are already  
2997 giving out benefits and credits for the purchase of efficient  
2998 appliances and other technologies. In fact, Pacific Gas and  
2999 Electric, PG&E, now has a Climate Smart program that now  
3000 actually rewards you and allows you to zero your carbon  
3001 emissions as well.

3002 What is needed in the process is to bring these

3003 technologies much more broadly to market and to establish a  
3004 vision and a plan for how to put this in place. If we can  
3005 put the next slide up, please, this highlights the dramatic  
3006 difference, the almost 40 percent difference in electricity  
3007 consumed among some of the most efficient States, such as New  
3008 York and California and the Country as a whole. The message  
3009 here is that not is a range of technologies available today,  
3010 dramatic enough to not just cause personal levels of savings,  
3011 but to cause savings that have saved the States the need to  
3012 install entire new power plants, including some of the most  
3013 polluting coal-fired power plants, but also to close down  
3014 current plants, such as the Bay View Hunters Point in the San  
3015 Francisco area, and replace it not with new generation, but  
3016 with a suite of efficiency measures and a range of local  
3017 generation of solar and wind power that again have  
3018 dramatically saved emissions in the region.

3019 If we can advance to slide one, the savings that we have  
3020 seen in these most efficient States, if applied nationwide,  
3021 would actually more than offset our entire import of fossil  
3022 fuels from off of North America. So it is far more than an  
3023 individual measure. It saves dramatic amounts of carbon  
3024 emissions.

3025 Next slide, please. We have also seen a dramatic  
3026 increase in the ability of renewable energy to provide  
3027 significant amounts of power supply. Wind power in

3028 | particular, in some of the most efficient wind plants, such  
3029 | as the San Pablo Plant in New Mexico, are producing  
3030 | electricity at 3 cents a kilowatt hour, a price far lower  
3031 | than any of the fossil fuel plants we are discussing today.  
3032 | So renewable energy options provide a way to do very low cost  
3033 | carbon-free generation, across a range of options.

3034 |         In fact, in the next slide, I highlight a map of the  
3035 | United States showing the States across the Country, the 29  
3036 | States and the District of Columbia that have all enacted  
3037 | significant calls for renewable energy, so-called renewable  
3038 | energy portfolio standards, that range from 10 to 15 to  
3039 | almost 30 percent of their electricity needs in the coming  
3040 | years to come from renewables. So it is far from an isolated  
3041 | or a small-scale effort. In fact, those States have done  
3042 | this, such as Colorado, they instituted one of these issues  
3043 | by popular vote, and have seen their rates fall in the last  
3044 | months, not increase, but drop.

3045 |         Next slide, please. There are job benefits by investing  
3046 | in new energy industries, both efficiency and in renewables.  
3047 | In fact, a study that our lab recently completed concluded  
3048 | that there were three to five times more jobs generated by a  
3049 | dollar investment in these clean technologies than in the  
3050 | existing mix. It is a dramatic savings.

3051 |         I will end with the last picture that shows that we in  
3052 | fact have quite a road map already in place, with a range of

3053 | options that both save on energy and save money immediately,  
3054 | and a road map toward the introduction of renewables as well  
3055 | as efficiency that have been instituted on a national level  
3056 | or State by State, can dramatically reduce the need for these  
3057 | fossil fuel power plants. So while we wait to act at the EPA  
3058 | level, we have a dramatic range of opportunities available  
3059 | for us today.

3060 |       Thank you very much for your time.

3061 |       [Prepared statement of Mr. Kammen follows:]

3062 | \*\*\*\*\* INSERT \*\*\*\*\*

3063 | Chairman WAXMAN. Thank you very much, Dr. Kammen.  
3064 | Mr. Cline?

3065 STATEMENT OF JOHN CLINE

3066 Mr. CLINE. Thank you, Chairman Waxman. My name is John  
3067 Cline. I am a partner at the law firm of Troutman Sanders.  
3068 My practice focuses almost exclusively on air quality issues,  
3069 particularly under the Federal Clean Air Act.

3070 Before I begin, let me state that I am not here  
3071 advocating or representing any particular position of a  
3072 company or industry. Nor am I receiving any remuneration for  
3073 this testimony. The views expressed today are my own.

3074 Having said that, I would like to start out by stating  
3075 that within the confines of the Clean Air Act, I believe that  
3076 EPA Region 8 correctly decided the question of whether to  
3077 regulate CO2 emissions with the Bonanza PSD permit. The PSD  
3078 program applies to air pollutants subject to regulation under  
3079 the Act. However, Region 8 appropriately concluded that  
3080 greenhouse gases are not at this time subject to regulation  
3081 under the Act.

3082 In Massachusetts v. EPA, the Supreme Court concluded  
3083 that greenhouse gases are Clean Air Act pollutants. The  
3084 Court also held that EPA must regulate greenhouse gases for  
3085 motor vehicles, but only if EPA first determines that  
3086 greenhouse gas emissions may reasonably be anticipated to  
3087 endanger public health or welfare. So until EPA actually

3088 | makes that necessary endangerment finding, and then requires  
3089 | some type of control limits or emission limits on carbon  
3090 | dioxide, CO2 cannot be regulated under the PSD program.  
3091 | Therefore, even after Massachusetts, it was necessary for  
3092 | Region 8 to decline to include CO2 conditions in the Bonanza  
3093 | permit.

3094 |         We have heard that EPA has indicated it will soon  
3095 | commence a rulemaking to determine whether it will make the  
3096 | endangerment finding, and if so, the type of greenhouse gas  
3097 | regulations it will adopt for motor vehicles. However, the  
3098 | Committee must understand that if EPA regulates mobile  
3099 | sources, this action has the potential for enormous impacts  
3100 | on stationary sources. Indeed, these enormous impacts on  
3101 | stationary sources would exist today if CO2 were determined  
3102 | to be a regulated air pollutant under the Act. That  
3103 | determination would trigger PSD regulation of a huge number  
3104 | of buildings and facilities.

3105 |         Under the Act, major sources are defined as the type of  
3106 | facility that emits either 100 tons per year or 250 tons per  
3107 | year. Now, 100 tons or 250 tons may not be very much for a  
3108 | traditional air pollutant, but it really is a very small  
3109 | amount of CO2. CO2 emissions from hundreds of thousands of  
3110 | buildings and facilities likely now exceed this threshold,  
3111 | including apartment and office buildings, hotels, malls,  
3112 | large retail stores, warehouses, colleges, hospitals, as well

3113 | as product pipelines, food processing facilities, heated  
3114 | agricultural facilities, many, many more. These types of  
3115 | sources have never gone through PSD permitting before because  
3116 | they emit so very little of the traditional air pollutants.  
3117 | But they would now if CO2 is deemed to be a regulated air  
3118 | pollutant at this point.

3119 |         Now, PSD permitting is incredibly costly, time-consuming  
3120 | and burdensome. But if CO2 were deemed to be a regulated air  
3121 | pollutant before EPA completes its expected rulemaking on  
3122 | greenhouse gas emissions from motor vehicles, the State  
3123 | permitting authorities at EPA would become swamped with huge  
3124 | backlogs of PSD applications. An overwhelming and  
3125 | unprecedented roadblock to new investment would be created  
3126 | for a host of previously unregulated buildings and  
3127 | facilities. Yet all of this economic pain would come at very  
3128 | little environmental gain.

3129 |         I understand EPA is likely to address the implications  
3130 | of PSD regulation of greenhouse gases as part of its  
3131 | rulemaking process under the remand of the Massachusetts  
3132 | case. EPA needs the time to craft a greenhouse gas  
3133 | regulatory program that will lessen the regulatory burdens on  
3134 | all these very small CO2 emitters. And the public deserves  
3135 | the opportunity to comment on that regulatory approach.

3136 |         On the other hand, if carbon dioxide is declared to be  
3137 | subject to Clean Air Act regulation right now, then a

3138 | multitude of new and expanded buildings and facilities will  
3139 | be subject to the substantial burden, expense and the delay  
3140 | of PSD permitting.

3141 |         Thank you.

3142 |         [Prepared statement of Mr. Cline follows:]

3143 | \*\*\*\*\* INSERT \*\*\*\*\*

3144 Chairman WAXMAN. Thank you very much, Mr. Cline. I am  
3145 going to start off the questions.

3146 Secretary Curry, I want to thank you and the State of  
3147 New Mexico for making it a priority to address climate change  
3148 and to reduce greenhouse gas emissions in the State. Your  
3149 State does produce a lot of energy. If New Mexico can do it,  
3150 then other States in the Nation can do it as well. I  
3151 understand you wanted to make some comment about correction  
3152 on something you said earlier?

3153 Mr. CURRY. Thank you, Mr. Chairman. That is correct. I  
3154 feel so passionately about what I was saying I left out  
3155 ``dis'' as opposed to, I said agreeing instead of  
3156 disagreeing. So I mis-spoke, and I wanted to make it clear to  
3157 the Committee that New Mexico strongly disagrees with their  
3158 statement regarding IGCC and BACT. Thank you, Mr. Chairman.

3159 Chairman WAXMAN. I understand from your written  
3160 testimony your concerns about the impact of Desert Rock Power  
3161 Plant, which would have massive uncontrolled emissions of  
3162 greenhouse gases. Can you explain why just one facility like  
3163 the proposed Desert Rock Power Plant will greatly hamper your  
3164 State's ability to meet greenhouse gas emission reduction  
3165 goals that it has set?

3166 Mr. CURRY. Mr. Chairman, the primary reason is that the  
3167 proposed Desert Rock facility will emit approximately 12  
3168 million metric tons of CO2. It is directly in the area where

3169 | we already have existing two other coal-fired power plants.  
3170 | We think the facility has not been properly studied. We  
3171 | think the facility's market has not been properly looked at.

3172 | Chairman WAXMAN. So you would not grant a permit to a  
3173 | plant like this without addressing the greenhouse gas  
3174 | emissions?

3175 | Mr. CURRY. Mr. Chairman, if it was located anywhere  
3176 | other than where it is being located, being proposed to be  
3177 | located in the State of New Mexico, no, we would not.

3178 | Chairman WAXMAN. I would hope that as New Mexico's  
3179 | environmental secretary that you would be hearing from EPA  
3180 | and they would be reaching out to your State about this  
3181 | Desert Rock Power Plant. Has Administrator Johnson contacted  
3182 | you or the Governor to discuss this power plant?

3183 | Mr. CURRY. Mr. Chairman, he has not. We are frustrated  
3184 | even more so by the fact that the administration of this  
3185 | power plant permitting process would come out of EPA Region  
3186 | 9, out of San Francisco. We operate in Region 6. The  
3187 | frustration that exists not only is from the State to EPA but  
3188 | also, I feel that there is some frustration between EPA  
3189 | regions because of the lack of communication on the  
3190 | particulars of this plant.

3191 | Chairman WAXMAN. Okay, thank you.

3192 | Dr. Kammen, I want to talk to you about the jobs issue.  
3193 | Because advocates for the White Pine Energy Station in Nevada

3194 | and the Desert Rock coal-fired power plant in New Mexico have  
3195 | argued that what is important here are all the jobs that are  
3196 | going to be provided. They are talking about 100 full-time  
3197 | jobs for the life of the plant.

3198 |         Can we provide jobs to people without polluting the  
3199 | environment through uncontrolled coal-fired power plants?

3200 |         Mr. KAMMEN. We can. In fact, most of the job benefit  
3201 | that has been cited in these pro-coal plants are in the  
3202 | construction phase, which lasts a few years. The operations  
3203 | phase jobs are much lower, and in fact, if you look at the  
3204 | jobs over the life of solar facilities, wind facilities and  
3205 | the expansion of the energy efficiency industry, all of which  
3206 | I demonstrate in my testimony, were significant players, the  
3207 | job numbers are significantly higher for those low-carbon  
3208 | technologies.

3209 |         In fact, the average is three to five times more jobs  
3210 | per dollar invested or for megawatt provided by investments  
3211 | in the renewable and efficiency side than in the fossil fuel  
3212 | side of the equation. So it is good for local economies, in  
3213 | fact, too, to build their clean industries up at this time.

3214 |         Chairman WAXMAN. A lot of people say these power plants  
3215 | are going to be in areas without much population near them,  
3216 | and that this job creation is a selling point to the local  
3217 | communities. What would you say to the local communities if  
3218 | they were considering these coal-fired power plants?

3219 Mr. KAMMEN. In fact, the irony is that large coal-fired  
3220 power plants do not preferentially send their power locally.  
3221 It gets put on the grid overall. And we know how to transmit  
3222 power long distances. So except for the very short  
3223 construction phase of these facilities, the job benefits to  
3224 communities will be much higher for ongoing local power  
3225 provisions. So if you really want to help local communities,  
3226 you will not only build the jobs there, but you will also  
3227 reduce the pollution loads. Idaho, for example, has already  
3228 ruled against building new coal-fired power plants, not even  
3229 because of the global warming issue, but because of the  
3230 mercury poisoning. So there are multiple local benefits, in  
3231 fact, in going toward a lower carbon economy. The analysis  
3232 in the States like Rhode Island, New York, California that  
3233 have invested heavily in energy efficiency and renewables  
3234 have found that those can be brought in exceedingly cheaply,  
3235 often at a net savings, meaning investing in efficiency in  
3236 particular has paid back with not only lower cost power, but  
3237 a whole range of other benefits that accrue to the local  
3238 community as well.

3239 Chairman WAXMAN. Thank you. There is one last question  
3240 I have of Mr. Doniger. Mr. Cline suggested in his written  
3241 testimony that it would be catastrophic if CO2 is determined  
3242 to be subject to regulation under the Clean Air Act. He said  
3243 it would have an enormous impact on the economy and it would

3244 | not be favorable. How do you respond to that, assuming you  
3245 | disagree with it?

3246 |         Mr. DONIGER. Two points, Mr. Chairman. First, the  
3247 | Supreme Court heard the same argument from the Government and  
3248 | from the industries and decided, look, the law is the law,  
3249 | let's follow it. Those are make-weight arguments.

3250 |         The second point I make is, we are talking about  
3251 | elephants here and he is talking about mice. We are talking  
3252 | about the big power plants, no party comment intended, large  
3253 | animals versus mice. We are talking about very, very large  
3254 | power plants, and he is talking about malls and small  
3255 | operations. Now, Mr. Cline indicated that EPA is going to  
3256 | try to work out a solution in SR rules to take care of the  
3257 | mice. I am quite interested to see what that might, something  
3258 | we might be able to cooperate on. But it is not an excuse  
3259 | for ignoring the elephants as we move forward now. The power  
3260 | plants that are being built now should be regulated for their  
3261 | CO2 emissions now.

3262 |         Chairman WAXMAN. Thank you.

3263 |         Mr. Issa?

3264 |         Mr. ISSA. Thank you, Mr. Chairman.

3265 |         Mr. Doniger, I am a little confused. I am going to try  
3266 | and get the record straight. If EPA acts capriciously, in  
3267 | your opinion, you sue them, right? You have a record, your  
3268 | organization has a record--

3269 Mr. DONIGER. When they break the law and when they act  
3270 arbitrarily, yes, we would.

3271 Mr. ISSA. Okay. Mr. Cline, Mr. Doniger has ben saying  
3272 here, and I just want to make sure we get it from a legal  
3273 standpoint, saying that in light of a Supreme Court case that  
3274 says only for mobile, because that is all it said, and it  
3275 said that it has the power to regulate it, he is saying you  
3276 should not give permits to power plants that are underway  
3277 right now, which as I understand, there is a legal mandate  
3278 passed by this Congress, signed by a previous President, that  
3279 said you have one year in which to allow or deny based on  
3280 current law.

3281 Mr. Tierney earlier had the same sort of a thing for the  
3282 EPA Administrator, in which he said they should postpone  
3283 permits. Can you set the record straight from a legal  
3284 standpoint? Wouldn't somebody, and let's assume for a moment  
3285 the people who have hundreds of millions of dollars online  
3286 and have bought the land and are in the process, wouldn't  
3287 they have every right to sue if arbitrarily the Administrator  
3288 or anybody else decided just to not grant permits?

3289 Mr. CLINE. Congressman, I certainly believe they would.  
3290 I think it is within Section 165 of the Clean Air Act, which  
3291 addresses the PSD permit requirements, and buried within  
3292 there is a requirement that once a permit application is  
3293 complete, the permitting authority has 12 months to either

3294 | issue the permit or deny it. It cannot just sit on it and  
3295 | let it wait and wait and wait.

3296 |         Mr. ISSA. So if we wanted to do it immediately, as Mr.  
3297 | Doniger says, Congress offers a bill, the Chairman probably  
3298 | has one ready already, get it to the Senate to ratify, get  
3299 | the President to sign it and you change the law, you can do  
3300 | it immediately. That would be the legal way to do it without  
3301 | interfering with existing law, signed, and existing rules  
3302 | that went through a whole process of scientific review and  
3303 | then public hearing, isn't that right?

3304 |         Mr. CLINE. That is correct. The PSD regulations have  
3305 | been in effect for almost 30 years. I think all these power  
3306 | plants want to do is play by the rules like everyone else and  
3307 | not have them changed in midstream.

3308 |         Mr. ISSA. Isn't it your understanding that even if we  
3309 | did this, even if the Chairman offered a law, the Senate  
3310 | voted the same law, the President signed it, and we stopped  
3311 | all new construction of all new CO2 plants, wouldn't we in  
3312 | fact simply be watching China with its several new power  
3313 | plants, half a dozen plus a month and growing, producing  
3314 | these unregulated plants regardless, and by the way,  
3315 | producing them to take the jobs that we are not able to do  
3316 | without energy? Isn't that true?

3317 |         Mr. CLINE. Yes, sir, that is my understanding, although  
3318 | I must admit, I am a lawyer, I don't know necessarily about

3319 | the economics.

3320 |         Mr. ISSA. Dr. Kammen, you said a couple of things and I  
3321 | am going to take issue with them. One of them is the 100  
3322 | jobs. The 100 jobs created by the power plants, isn't it  
3323 | true that in fact 700 or 1,200 megawatts produces jobs? In  
3324 | other words, electricity produces jobs. If you are going to  
3325 | look at the value of jobs, you have to include the  
3326 | electricity. And if you don't produce the electricity, I  
3327 | understand you might choose to produce it through other  
3328 | means. But if you don't produce the electricity, you in fact  
3329 | don't produce the jobs, for all practical purposes, that are  
3330 | produced by the electricity, not the ones produced by  
3331 | producing electricity. Fair enough?

3332 |         Mr. KAMMEN. It is true that if your industrial activity  
3333 | requires power, then you need a source for it.

3334 |         Mr. ISSA. Okay.

3335 |         Mr. KAMMEN. Let me just finish--

3336 |         Mr. ISSA. No, I got the answer to your question--

3337 |         Mr. KAMMEN.--we have more jobs for the clean energy  
3338 | generation side, not just the efficiency, but by generating  
3339 | with biofuels, solar or wind.

3340 |         Mr. ISSA. I understand that there are a lot of ways to  
3341 | produce electricity. I just want to make sure that we all  
3342 | understand we don't produce the electricity, you can't save  
3343 | yourself completely into wealth.

3344 Mr. KAMMEN. Absolutely.

3345 Mr. ISSA. There is no net paycheck if there is no  
3346 paycheck.

3347 Mr. KAMMEN. That is right. In fact, our report  
3348 highlights that the jobs come from all these areas.

3349 Mr. ISSA. As my time expires, I have a bone to pick. I  
3350 would like you to prove for this Committee or deliver how you  
3351 came up with 3 cents a kilowatt hours. I was the chairman of  
3352 the subcommittee that went through this process. We were  
3353 working on what it would take to get to zero net carbon in  
3354 the last Congress. We had testimony after testimony by, to  
3355 be honest, pro-environment scientists who said, look, here is  
3356 the scale, it is \$350 trillion today, with research and  
3357 investment, here is how we get it down, here is how we get to  
3358 that goal as soon as possible at a certain price. Three  
3359 cents a kilowatt hour is such an absurd term for me to hear  
3360 as a Californian, a major producer, that if you take away  
3361 subsidy and you talk about the actual cost of producing, my  
3362 bill in California, the Chairman's bill in Los Angeles--

3363 Mr. KAMMEN. Mine as well.

3364 Mr. ISSA.--we all pay more than 3 cents a kilowatt hour.  
3365 So if 3 cents were an unsubsidized capability, wouldn't we  
3366 all be buying that? And if not, tell me why we would be  
3367 paying so much more for others. Because to be honest, you  
3368 just said to me that it beats the price of coal--

3369 Mr. KAMMEN. That is correct.

3370 Mr. ISSA.--which it doesn't.

3371 Mr. KAMMEN. I beg to differ.

3372 Mr. ISSA. So would you please, what I am going to ask  
3373 is, for the record, so we can all look at the same  
3374 handwriting, you show me where it is 3 cents a kilowatt hour.  
3375 Because I am going to go to PG&E and SDG&E and all the other  
3376 utilities. If your facts hold up, you better believe I am  
3377 going to be doing everything I can to stop the NIMBYs from  
3378 stopping the windmills from being put up. I really would  
3379 appreciate that for the record, because that is too good a  
3380 figure for me to ever have seen, even though I am a strong  
3381 supporter of wind energy.

3382 Thank you. I yield back.

3383 Mr. KAMMEN. Mr. Issa, I would be delighted. In fact,  
3384 both in my testimony I highlight the cost for wind power for  
3385 some of the best plants. The New Mexico Governor's office  
3386 has highlighted the cost for that particular plant in the  
3387 southwest part of the State. I will submit additional data  
3388 on some of the costs for the best wind farms.

3389 But you are right, the one aspect of the story, in that  
3390 there is a range of costs. We have wind farms that are  
3391 performing at that level and significantly higher. But the  
3392 fact is that we have a number of wind farms designed in the  
3393 last few years and operating today which do provide power at

3394 | that exceedingly low cost.

3395 |       Mr. ISSA. I appreciate that.

3396 |       [Information to be supplied follows:]

3397 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

3398 Chairman WAXMAN. Mr. Doniger, do you want to respond?

3399 Mr. DONIGER. Mr. Issa, I just wanted to clarify that the  
3400 one year deadline that you referred to applies to a permit  
3401 application that is complete. EPA would have the authority,  
3402 and we think they have the responsibility to say it is not  
3403 complete, and the clock doesn't start to run until you have  
3404 analyzed BACT for CO2, until you have analyzed the  
3405 alternative technologies for CO2. So there is not a strict  
3406 deadline.

3407 Mr. ISSA. I appreciate that, but there is no regulation  
3408 at this time that has been produced for that. So if the shoe  
3409 was on the other foot and there was a regulation and they  
3410 decided to shortcut it because they considered it already in,  
3411 you would sue. I don't think there is any question, the  
3412 testimony is pretty clear, that if the EPA acted in this  
3413 manner, they would be acting capriciously, they would be  
3414 sued, and they would lose. We would end up paying for the  
3415 permit, for the building that wasn't built.

3416 Mr. DONIGER. I disagree with you, sir.

3417 Chairman WAXMAN. All right, the gentleman's time has  
3418 expired. Ms. Watson?

3419 Ms. WATSON. Thank you so much, Mr. Chairman

3420 Let me address this to Secretary Curry. I want to  
3421 commend New Mexico and the other States that have taken the  
3422 lead on addressing greenhouse gas emissions. You and others

3423 | are taking steps that benefit the Country and the world. I  
3424 | was not here earlier to hear your testimony, but in your  
3425 | written testimony you stated that the Governor has  
3426 | established some of the toughest State greenhouse gas  
3427 | emission reduction targets in the Nation. At the same time,  
3428 | I know that New Mexico has historically been a fossil energy  
3429 | State.

3430 |         So have the people of New Mexico supported the climate  
3431 | change policies that you and the Governor have introduced?

3432 |         Mr. CURRY. Mr. Chairman, Member Watson, I would say that  
3433 | they have. We are moving forward on it. One of the things  
3434 | that Governor Richardson did that I think is very important  
3435 | to the process in New Mexico was establishing a very broad  
3436 | stakeholder group of people, the Climate Change Advisory  
3437 | Council, that came up with 69 recommendations for the  
3438 | Governor to implement reduction of greenhouse gases within  
3439 | the State of New Mexico. It is significant because this  
3440 | group worked very hard, it wasn't a situation where they sat  
3441 | around and held hands and sang Kumbayah, by any means. It  
3442 | was hard fought discussions over a period of almost a year.

3443 |         Ms. WATSON. And who was in the group? What types?

3444 |         Mr. CURRY. We had members from the dairy industry, we  
3445 | had members from the oil and gas industry, we had members  
3446 | from the car dealers association in New Mexico, we had  
3447 | members from the environmental advocate groups in New Mexico,

3448 | we had members from State government, we had members from  
3449 | municipalities and counties. So I think the group was as  
3450 | broad as you can possibly imagine in New Mexico.

3451 |         Sixty-seven of the 69 were passed unanimously. Since  
3452 | that time, we have moved forward with assigning a cost to  
3453 | most of these items and we have started to implement them,  
3454 | such as the Clean Car Initiative that we will be moving  
3455 | forward on in a few weeks to join California. Also, we have  
3456 | just recently established one of the first in the Country as  
3457 | far as a CO2 registry for the industries in New Mexico like  
3458 | oil and gas. So it is very important in New Mexico that we  
3459 | make things happen. Governor Richardson, aside from  
3460 | everything else that we can talk about things here today is a  
3461 | gentleman who likes to make things happen and insists upon  
3462 | making things happen. In the process, we have got a good  
3463 | buy-in and a good consensus to make this happen.

3464 |         Are there people who disagree? Absolutely. But the  
3465 | benefit that we are able to show through these stakeholder  
3466 | discussions and stuff is going to lead the way.

3467 |         Ms. WATSON. It speaks well for the people of New Mexico  
3468 | and it seems like they understand that they can fight global  
3469 | warming while growing their State's economy. It seems to me  
3470 | also, being from California, that the people are getting it,  
3471 | you are getting it, but this Administration is not. I don't  
3472 | know if you were here for the first panel, but I couldn't

3473 | believe what I was hearing from the Administrator of the EPA.  
3474 | In California, the largest State in the Union, with the  
3475 | largest number of cars, we are trying to address the  
3476 | environment in which we all live and breathe. And we get  
3477 | stymied here. They are studying whether or not emissions  
3478 | into the air affect the plants on the ground and our personal  
3479 | health.

3480 |         So I just want to commend you, I appreciate your  
3481 | statement. It seems like you had a very broad base of people  
3482 | coming up with the recommendations that you put in law. I  
3483 | hope that we are successful, because our bill is a product of  
3484 | the people of California.

3485 |         Thank you so very much. Good luck.

3486 |         Mr. CURRY. Thank you.

3487 |         Chairman WAXMAN. Thank you, Ms. Watson.

3488 |         Mr. Shays?

3489 |         Mr. SHAYS. Thank you, Mr. Chairman.

3490 |         I find myself in this wonderful position of wanting us  
3491 | to deal big time with global warming, wanting India and China  
3492 | to be in that mix, questioning the implications of the  
3493 | environmental movement, because it says to me we are going to  
3494 | have to see nuclear power, we are going to have to see  
3495 | greater use of gas. So liquified natural gas sites on the  
3496 | coast. And also caring deeply about energy security,  
3497 | believing obviously that conservation is an absolute first,

3498 | key, easiest way, and alternative, renewable energy in the  
3499 | mix, but long-term payoff, not real short-term payoff. That  
3500 | is kind of where I come from.

3501 |         But I am struck by the fact that the ends don't justify  
3502 | the means. And I am feeling like the environmental movement  
3503 | to which I like to think I am a part is not able to get  
3504 | Congress to act, a very difficult Senate and a House that  
3505 | still hasn't come to grips with this, even within the  
3506 | Democratic party. So we are saying, okay, now we have this  
3507 | hook with EPA and let's use the Clean Air Act to deal with  
3508 | global warming.

3509 |         I am struck by the fact that my colleagues on the other  
3510 | side of the aisle are really railing on the Administrator to  
3511 | express an opinion before he has gone through the process. I  
3512 | want to know if any of you have a feeling, a similar feeling  
3513 | that we are kind of pushing the envelope a bit and kind of  
3514 | potentially mis-using the intent of the law, the Clean Air  
3515 | Act. I will start with you, Mr. Curry.

3516 |         Mr. CURRY. Mr. Chairman, Member Shays, my concern is  
3517 | that listening to the Administrator this morning and working  
3518 | and seeing how EPA affects the State of New Mexico is that we  
3519 | feel, we believe that the science has been proven.

3520 |         Mr. SHAYS. I am not talking science, I am talking about  
3521 | law. It seems to me that CO2 is a different kind of  
3522 | pollutant than any other, that Congress should be directing

3523 | the Administration to deal with it. That is what I am  
3524 | wrestling with. The fact that, I look at the Massachusetts  
3525 | law, and admittedly, I have not read the whole thing, but the  
3526 | excerpts I have, they are looking at mobile sources. The  
3527 | implications of this are mind-boggling to me, what  
3528 | potentially we could be demanding EPA to do. For instance,  
3529 | the Capitol, it emits a tremendous amount of CO2. Would it  
3530 | be considered a major polluter? And what are the  
3531 | implications of that?

3532 |         Let me go to Mr. Doniger.

3533 |         Mr. DONIGER. Mr. Shays, we too advocate and urge that  
3534 | Congress enact new legislation to deal with global warming.  
3535 | The Senate is making tangible progress now, and--

3536 |         Mr. SHAYS. Who is? The Senate, you said?

3537 |         Mr. DONIGER. The Senate. And there is tangible movement  
3538 | in the House. We would love to see more and we would love to  
3539 | see it faster.

3540 |         Mr. SHAYS. So do you think we are going to make better  
3541 | progress through the Senate than the House?

3542 |         Mr. DONIGER. I would encourage you to keep up with them.

3543 |         Mr. SHAYS. That wasn't a funny question, honest. Are we  
3544 | having an easier time in the Senate than the House?

3545 |         Mr. DONIGER. The Lieberman-Warner bill is moving through  
3546 | committee, and that is what I am referring to.

3547 |         Mr. SHAYS. Okay, fair enough.

3548 Mr. DONIGER. The point that I was going to make is that  
3549 the Clean Air Act, which was enacted in 1970, already gave  
3550 the Administration the power to respond to new pollution  
3551 problems as they are recognized. Now, for five years, the  
3552 Bush Administration took the position that it had no powers  
3553 in this matter, that the Clean Air Act did not apply. That  
3554 is what the Massachusetts case was about. And the Supreme  
3555 Court said, you are wrong, despite all the deference that the  
3556 Government gets, you are just flat wrong, and it is time to  
3557 start implementing the law.

3558 As I mentioned in my opening statement, there is another  
3559 case about power plants which was sent back at the same time.  
3560 So the power plant issue and the car issue are on the table  
3561 at EPA.

3562 Mr. SHAYS. Is there a difference between monitoring and  
3563 regulating?

3564 Mr. DONIGER. Not for the purposes of the Clean Air, Act,  
3565 no, not for these purposes. The Clean Air Act did not say,  
3566 subject to emission limitations. It said subject to  
3567 regulation. And regulations include the monitoring  
3568 regulations.

3569 Mr. SHAYS. Let me ask Mr. Cline that same question.

3570 Mr. CLINE. Well, sir, there are several definitions of  
3571 regulation. I know Black's Law--

3572 Mr. SHAYS. I want you to talk a little louder.

3573 Mr. CLINE. The Black's Law Dictionary defines regulation  
3574 as the process of controlling by rule or restriction. And it  
3575 is in that vein which EPA has interpreted the meaning of  
3576 subject to regulation for the last 20 some years.

3577 Furthermore, if I may, I would question whether or not  
3578 Section 821 of the statute is really in the Clean Air Act.  
3579 If you look at the statute, it talks about specific  
3580 provisions which amend the Clean Air Act. There are other  
3581 provisions with Statute 101549 where there is no indication  
3582 that that is an amendment.

3583 So it may be stretching the issue to say that this is  
3584 subject to regulation under the Act, when this particular  
3585 provision that Mr. Doniger refers to is not under the Act.

3586 Mr. SHAYS. Do you mind if I ask another question?

3587 Chairman WAXMAN. No, but let me just announce that we  
3588 have a vote, and we are going to come back, I want to thank  
3589 all the witnesses. Then we have a markup in committee. So  
3590 for those who are looking for markup, that will follow the  
3591 vote.

3592 Mr. SHAYS. But we are not asking the witnesses to come  
3593 back.

3594 Chairman WAXMAN. After Mr. Shays has completed his  
3595 questioning, you are free to go, and that will end the  
3596 hearing.

3597 Mr. SHAYS. Mr. Doniger, I felt like there was a

3598 | tremendous amount of effort to get the Administrator to say  
3599 | something that he argues should be said when he makes the  
3600 | decision going through a process. How did you view that  
3601 | again?

3602 |         Mr. DONIGER. Well, look, it is an open secret that the  
3603 | Administrator will make an endangerment determination. The  
3604 | President has said, go ahead and issue motor vehicle rules.  
3605 | And in order to do that, you have to make an endangerment  
3606 | determination.

3607 |         The President himself embraced the science, the IPCC,  
3608 | and he is, although quibbled about this at great length in  
3609 | the past, finally this September has sort of stopped  
3610 | quibbling about that and said, we accept and we embrace the  
3611 | IPCC science. So I don't think the issue is going to be  
3612 | whether Mr. Johnson equivocates about endangerment. I would  
3613 | be appalled if he did that.

3614 |         The question is, what does he need to do about the big  
3615 | power plants now. And the big power plant permit decisions  
3616 | don't turn on an endangerment determination. He can make the  
3617 | determination now that they need to go through the ATC and  
3618 | that they need to have their alternatives analyzed.

3619 |         Mr. SHAYS. Doesn't he have to make the endangerment  
3620 | finding before?

3621 |         Mr. DONIGER. No. Two answers.

3622 |         Mr. SHAYS. Okay, you say no.

3623 Mr. DONIGER. Two points. As I said in my testimony,  
3624 subject to regulation, we believe that CO2 already is. But  
3625 the alternatives, the requirement to analyze alternatives and  
3626 consider collateral environmental damages does not turn on  
3627 subject to regulation. So there is authority to do this now.  
3628 A responsible administrator would do this now.

3629 Mr. SHAYS. But it can be disagreed. Mr. Cline, is it  
3630 clear-cut, Mr. Cline?

3631 Mr. CLINE. I would respectfully submit that the  
3632 collateral impacts analysis is not a vehicle to determine  
3633 BACT for an un-regulated pollutant. It just simply does not  
3634 work that way.

3635 Mr. SHAYS. Okay. All right. I guess I have passed the  
3636 time, I have a minute left to get to vote. This has been an  
3637 interesting session and I know the Chairman would thank you  
3638 for being here. I guess I call it closed. Thank you very  
3639 much.

3640 [Whereupon, at 2:38 p.m., the committee was adjourned.]